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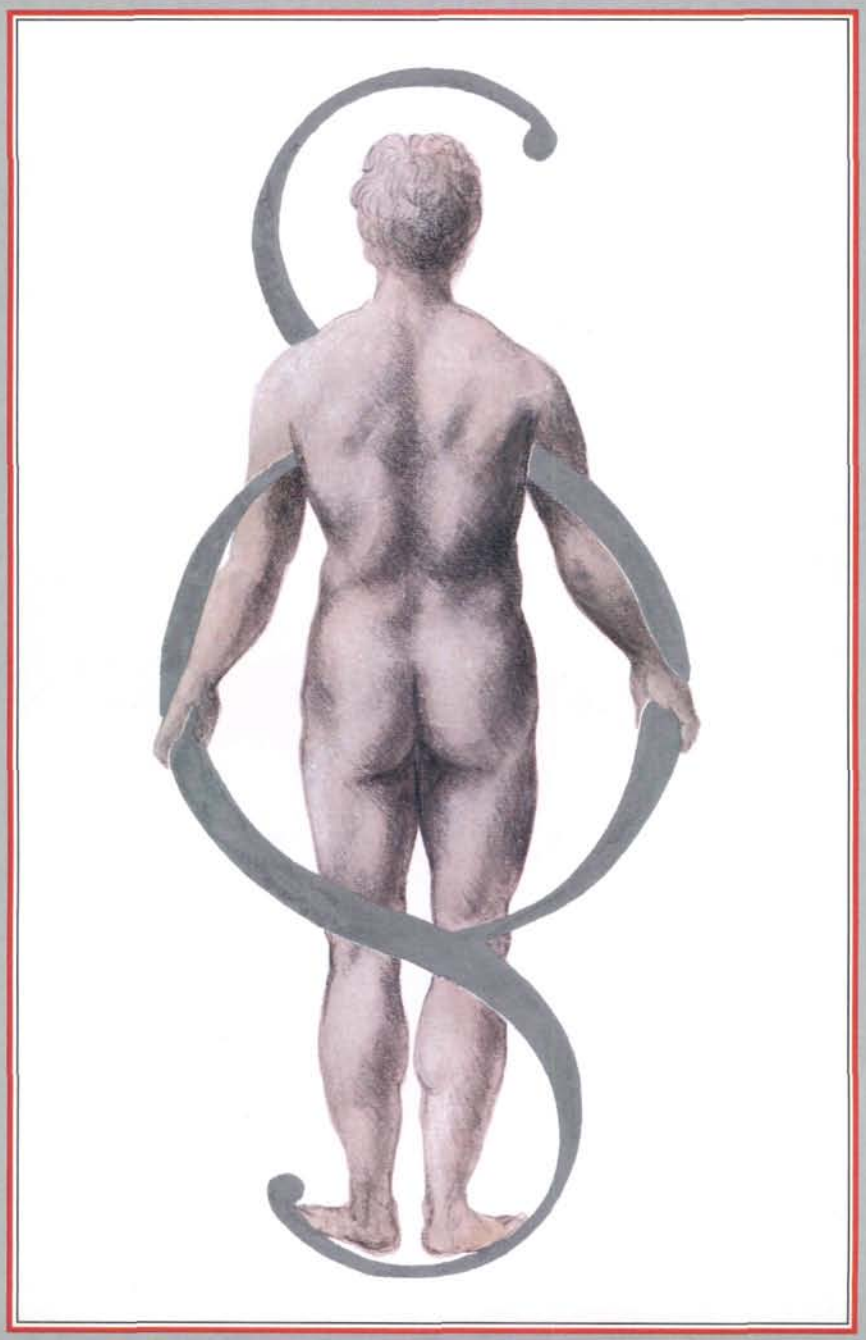
LAW AND ORDER

Crime and Punishment



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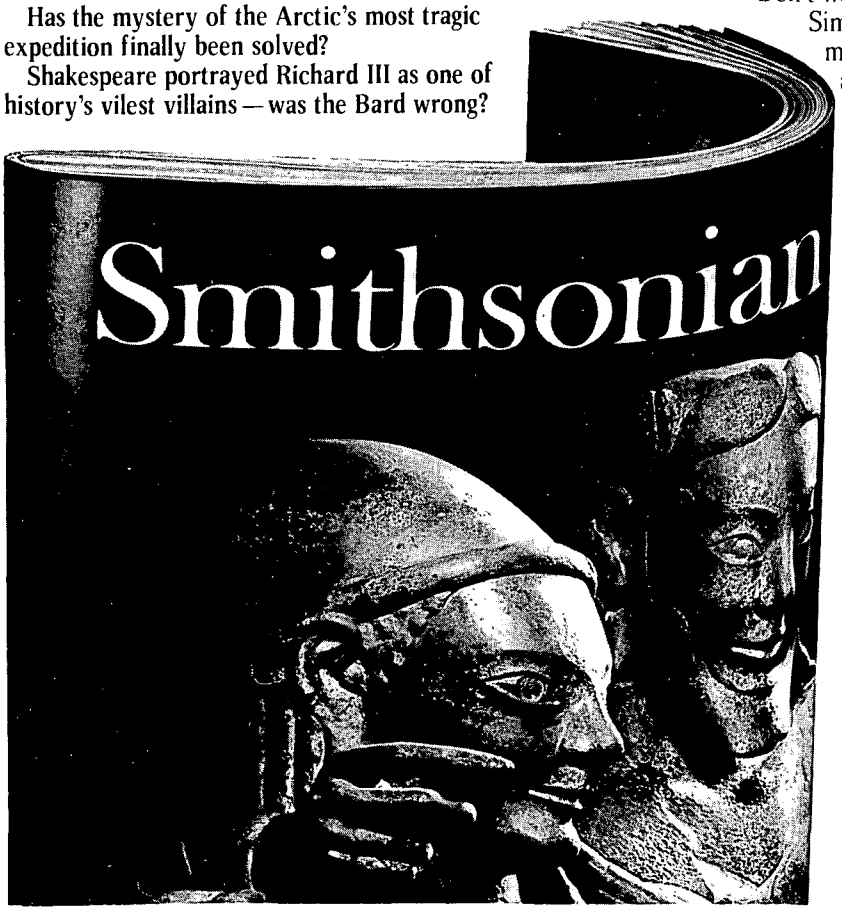

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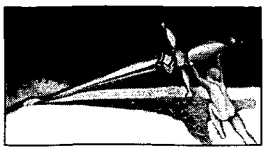

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A MAGAZINE OF AMERICAN CULTURE

Vol. 16, No. 5 May 1992

On 'Homelessness'

Theodore Pappas (Cultural Revolutions, November 1991) says, "There is, of course, no long-term answer to homelessness," but this begs the question. The focus should not be on solving the specific problem of homelessness, but on seeing homelessness as a symptom of modern decay. When the change of focus takes place, a "long-term answer to homelessness" will begin taking form.

Two observations by John Lukacs will help change this focus. Lukacs has pointed out that the modern age "passed" shortly after the end of World War II, and that our current concept of "home" was, directly and indirectly, one of the most important features of that age. So, Mr. Pappas, instead of looking at homelessness as an affair of bums, winos, derelicts, drunkards, addicts, slackers, and the insane, take a look from a point of view that sees all these as marks of a dying or already dead age.

Your piece itself gave several clues to a "long-term answer." You referred to Dan McMurry, who has called the loosening of the cohesiveness of the American family "the most important element in the explosive growth of homelessness." Well, one long-term answer to homelessness would then be to tighten up the family screws. McMurry himself falls down on the de-institutionalization of the mentally ill. He apparently failed to read *Myth of Mental Illness* by Thomas S. Szasz, who believes "mental illness" is no true "illness" but rather the result of failure to learn the rules of mental health. Another long-term answer to homelessness would therefore be to discover these rules and to teach them effectively. McMurry also speaks of the "steep increase in the number of alcoholics, especially among the young." So, here again, a long-term answer may be to regard alcoholism as a form of mental illness.

Are these "long-term answers" too difficult, Mr. Pappas? If and when we find and put these answers into effect, their purpose will not only be to put the homeless problem under control, but to solve the broader educational, economic, political, scientific, and social ones.

—*Stephen Miles*
Tucson, AZ

Mr. Pappas Replies:

I repeat, there is no long-term "answer" to homelessness. I admit in my editorial that several causes have contributed to homelessness, such as the de-institutionalization of the mentally ill in the 1960's and 70's, and it goes without saying that some homelessness would be eliminated if traditional family ties were strengthened and once again encouraged. And if we could solve "the broader educational, economic, political, scientific [?], and social" problems plaguing our culture, surely some more homelessness would diminish, as would drug abuse, street crime, illegitimacy, and a hundred other pathologies.

But even if we could return to the blissful days of the 1950's, when women were homemakers and fathers were breadwinners and the marital contract was something sacred, "homelessness" would still exist. The homeless simply would not be adorned with the sainted status they now enjoy; they would be called what they have always been called—bums, drunkards, misfits, and derelicts—and those in need of medical attention or psychological counseling would be either hospitalized or institutionalized. We can't go back to the 1950's, but we can reclaim the right to clean up our streets and parks.

That millions of ordinary people—"just like you and me"—are without homes and sleeping on our streets is pure myth, a lie propagated by special interest groups pursuing their own agenda. There are far fewer homeless than advocates claim, and the medical and psychological problems of many of the homeless are far more severe than commonly admitted. Criminal activity among the homeless is also coming to the fore. Late last year a 30-year-old man was arrested in Galveston, Texas, for the slaying of a female companion. The man was believed to be part of a train-riding gang of homeless men and women that is thought to be responsible for several murders throughout the West. Most interesting is the way the Associated Press described these individuals as "transients," "hobos," and "vagrants"—anything but "homeless." We wouldn't want, of course, to give the public the wrong opinion.

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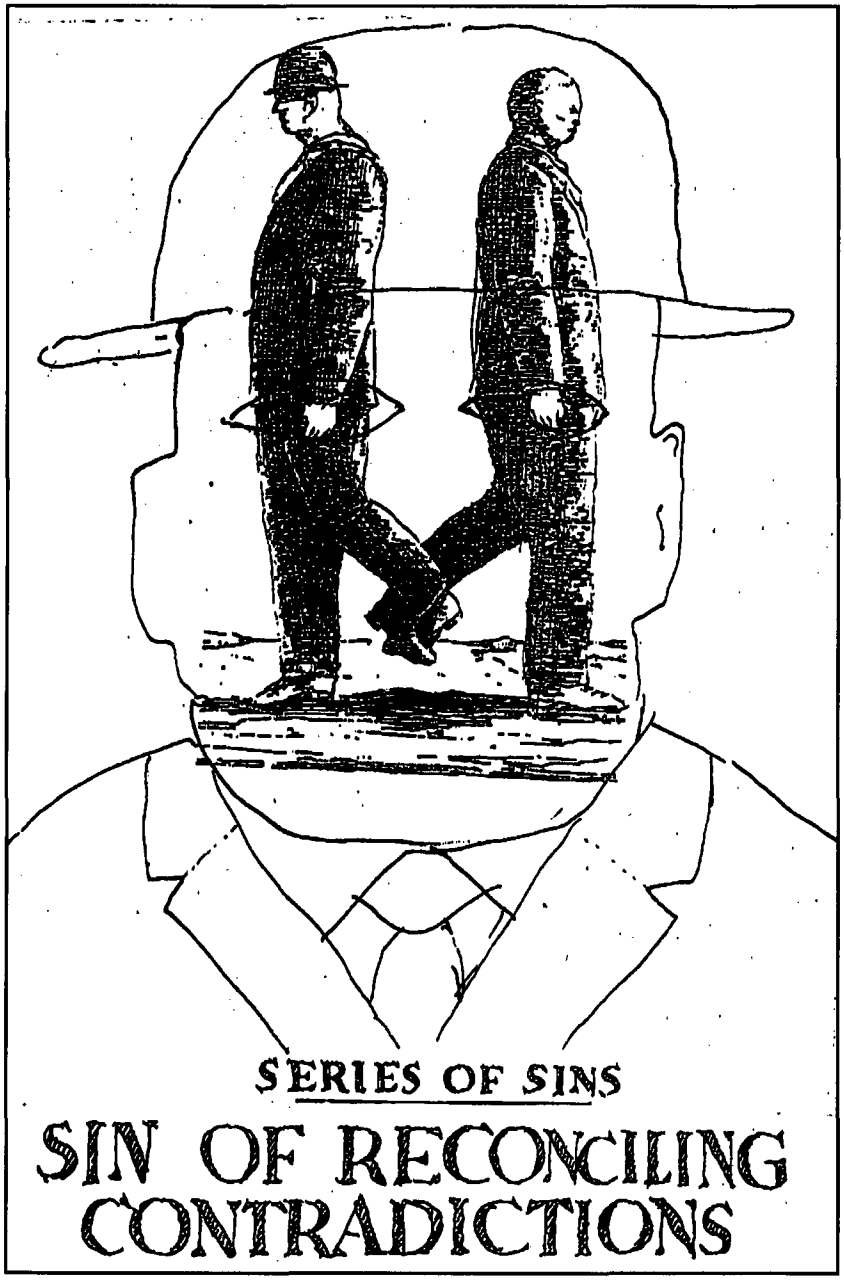
GOVERNOR CLINTON'S candidacy for President, plagued as it's been by charges of marital infidelity and draft evasion, has brought to the fore once again the question of whether personal character is relevant to fitness for public office. There are those to whom it is obvious that private behavior is relevant to public office. Others contend that public officials should be measured by their public acts and their private lives left alone. The latter position may have had some validity in older and better days of the Republic, when private life and public affairs were distinct spheres of life. The fact that the bachelor Grover Cleveland had possibly, as a young man, fathered an illegitimate child did not affect his capacity to execute the duties of Chief Magistrate of the Union, because he did not aspire to be anything more than a chief magistrate. That is, he sought nothing more than to execute the laws in keeping with his office, just as he had done as sheriff of Buffalo, where his duties had included that of hangman, and as governor of New York.

But the case is very different now, because the separation of state and society has completely broken down. When the state has its hand in our pocket, tells us with whom we may associate, threatens to regulate our spiritual life, and generally superintends us from cradle to grave, the private virtues of public officials, or lack thereof, become significant to us. This is especially true of those who put themselves forward upon a politics of moralism. Martin Luther King's lying and lechery might not invalidate his public position, but when his public position rests upon his role as a religious and moral leader whose chief business is to break down the barrier between private morality and public policy, then it does indeed become highly relevant. No one is entitled to be a saint until they have been examined by the devil's advocate.

Imagine the misery the Republic would have been spared if the private defects of character of John Kennedy and Lyndon Johnson had been widely known. Certainly neither would have been elected had the public been aware of what is readily known now. We have had, since Kennedy, a politics in which public figures have tried to carry the day by the glamour of high moral purpose—in which case private character becomes extremely relevant. Since the Kennedys have prospered largely through celebration of their glamour and virtues, we are entitled to know the other side of the story. Think what would have been saved to the Treasury if the people had known in advance about Senator Cranston's methods of campaign finance. But, of course, our great crusading media hid all these things from us, not considering them relevant. Imagine the barrage of sensationalism we would have received if poor Nixon, or Goldwater, or George Wallace had been guilty of 1 percent of the *private* malfeasance of Kennedy or Johnson. We can always count on the media to pursue their own agenda. Which is why we have seen a sudden rehabilitation of Dan Quayle, as the media have realized his usefulness in putting down a really dangerous conservative like Pat Buchanan.

In the meantime, we must insist that we have complete information about those who put themselves forward for public trusts. We want to know if our surgeon drinks or is a homosexual, if



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our accountant gambles, or our clergyman lives too well, and we are entitled to know what we need to know that is relevant to judging the character of those who seek to be entrusted with the fate of the Republic. It is reasonable to assume that the people are smart enough to distinguish between a youthful indiscretion, which few have escaped, and a real character problem, or whether a particular failing is relevant to public performance. When we judge Mr. Warren Beatty as an actor or Mr. Magic Johnson as an athlete, we should perhaps pay attention to their professional performance and not their private lives. But if they endorse a presidential candidate or are held up as a model for our youth, then we are entitled to enquire into questions of character.

In the old Republic private and public life were distinct, but it was also understood that a successful government of the people depended upon private virtue, in the people and the leaders. The office of the presidency, after all, was designed with George Washington in mind.

—*Clyde Wilson*

THE CRIMINAL, on the eve of sentencing, received as heartfelt a display of support as I've ever read about. More than fifty people filled the courtroom to plead for leniency. It happened in Rhode Island, but such things happen in courtrooms everywhere. This man, the supporters said, does not deserve jail. They called him an asset to society. Many, with tears in their eyes, spoke of how they'd known him through Alcoholics Anonymous, of his struggle to get sober, and please, they said, he has suffered enough. There is no reason to put him behind bars. The name of the defendant was Leo Langlais. Actually, defendant is the wrong word; criminal is correct. He admitted to the charges of sexual molestation.

After reading of all these souls who gave all this effort to speak in behalf of this man, I could not believe when I read the age of the victim. She is now 16—but during the time Langlais molested her, she was between three and thirteen. For so many to turn out to plead for leniency, I figured there had to be circumstances showing the crime was not that bad. So I called the prosecutor and asked: as these things go, was this a minor form of abuse? No, he said. Langlais admitted to having oral sex with the girl, forcing her to have oral sex with him, and actual rape: intercourse. I asked how often it happened. On and off throughout this ten-year period, he said. How did Langlais know the girl? A close family friend. "You're not saying he did some of these things when she was age three?" I asked. Yes, the prosecutor said, the first complaint of oral sex was at that age.

I told the prosecutor that Langlais's supporters say he has reformed. What they said, he corrected, is that he'd gotten sober through Alcoholics Anonymous. "But he has yet to look himself in the eye and say, 'I am a child abuser,'" he added. But this nuance didn't occur to those who filled the courtroom. They insisted on seeing the accused as victim. There was even a local school committeewoman who spoke for Langlais. She said he has already served his own private hell, so we should have sympathy.

But I'd like to ask: did any of those fifty people in the courtroom think of the other private hell being endured in this case? Speak with any expert on child molestation and they will tell you there are few things that damage a psyche more. They will tell you it leaves scars that can ruin a child's chance of ever leading a happy and adjusted life. It is a crime, one victim told me, that strips a woman's soul. And the damage is even greater when the molester is someone the child trusts. It is the ultimate betrayal.

So why would the courtroom fill with supporters of the accused? Why is there an instinct to protect those we've befriended despite evidence showing they are criminals? We perhaps see that instinct most blatantly when politicians are prosecuted. Almost always, the faithful insist their transgressions should be forgiven. They insist the accused are in fact victims—usually of political vendetta. I think of Marion Barry of Washington, and of another Rhode Island case: only months ago, the mayor of the state's second largest city pleaded guilty to extorting up to $1 million in kickbacks from contractors. But when one lone contractor—a landscape designer—went public disclosing it, he was vilified on radio talk shows. The crooked mayor was painted as victim. Several callers echoed a disturbing theme: even if he's guilty, he's done a good job—he's a nice man—so why pick on him?

And so it was with the Rhode Island molester. Even after he'd pleaded guilty, his lawyer kept calling him a victim—a victim who was struggling nobly to overcome an unhappy upbringing. He sexually assaulted a three year old, but because he had a tough childhood, and was burdened by alcoholism, he's supposedly the real victim. This was what his supporters said in the courtroom. Because they knew him, and liked him, his past evil was called irrelevant—not his true character. The real Leo Langlais, they insisted, was the nice guy at the AA meetings. But they failed to see a truth about most criminals: that their real nature lies not in the face they put on but in the wrong they have done.

It is a truth for judges, above all others, to ponder. And perhaps they might also ponder this: what message would it give to other molesters, other criminals, to allow the accused to walk free simply because friends have expressed their support? Perhaps this message: if you can find a few naive souls to testify that you're a likable, struggling soul today, then you don't have to pay for the evil you did yesterday.

The supporters of the Rhode Island molester insisted he get no jail. The prosecution asked for 12 years, but the judge—apparently affected by the character witnesses—gave him six. Not enough, judge. Not enough.

—*Mark Patinkin*

TAMMY WYNETTE injected the only note of reality into the race for the Democratic nomination, when she lashed out at Governor Clinton's wife for saying she was not "some little woman standing by my man like Tammy Wynette." Knowing nothing of country music—or of the country itself—the established press was quick to ridicule Wynette and quote the lyrics of "Stand By Your Man" as evidence against her. As usual, they got everything wrong. "Stand By Your Man" was not a paean to feminine nonresistance but an anthem of loyalty. "But if you love him, you'll forgive him, even though he's hard to understand."

The name for this sort of relationship used to be marriage, and it worked both ways. Loyalty did not include, for example, putting up with a tomcat who only comes home for R&R, and Tammy did not shrink from throwing husband George Jones out of her life. Unhappily, it has been the reckless and irresponsible Jones who has emerged as the most consistently satisfying singer in country music, if only because he has the best taste in picking songs that seem

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to comment on his own hapless existence.

George Bush, give the devil his due, understands some of this, and the President has for years pretended to an interest in country music, going so far as to attend last year's CMA ceremony. Real people with votes—as opposed to drug addicts, boat people, and worldwide victims of discrimination—real people like country music and take it far more seriously than they do politicians. If Bill Clinton and the wife who only under pressure agreed to be called Mrs. Clinton don't understand that, then they and their party are doomed to sit out another four years whining about the State of the Union Address of a Yalie who has learned how to wear flannel shirts, drop the g's off his participles, and feign an affection for Merle and Randy and Jones. They know it's as phony as a speech by Peggy Noonan, but you can't help being flattered when the President of the world pretends to be an American.

—*Thomas Fleming*

VICE-PRESIDENT QUAYLE'S speech last year regarding the overabundance of lawyers in America seems to have had little effect on the 84 students in my first-year Civil Procedure class. The Vice-President's speech has affected only some members of the bar who are looking to protect their interests. This lack of response to the Vice-President's speech is unfortunate because he delivered the right message; he just chose the wrong audience.

The Vice-President correctly noted that the American legal system is replete with problems. Certainly, most reasonable people, which includes even a healthy number of lawyers, agree with the Vice-President's call for a system that makes the loser pay the winner's costs in many cases. So too, many of those same persons would agree that the number of lawsuits filed in America hurt our country's competitiveness. However, neither of these problems, nor a vast number of others hindering our legal system, arose because of too many lawyers. Supply did not create demand.

Instead, the free market system has convinced more and more, and better and better (so my admissions director tells me) students to matriculate at my law school and at others across the country. The free market, with a hand from *L.A. Law*, has convinced these students that becoming a lawyer will benefit them enough to forego three years of salary at some other endeavor and to spend at least fifteen thousand dollars to come to the law school where I teach. Many of my current students have left jobs to come to law school because they think this will lead to better and more frequent promotions in their line of work. Employers, in other words, have provided an incentive for attending law school. They have done so for several reasons.

Forty or fifty years ago employers considered a bachelor's degree a mark of distinction; an employee who was a college graduate was, in fact, considered an exceptional thinker. Very few of us hold such ideas today. As the number of colleges and college graduates proliferated, it grew harder to distinguish what the degree actually meant, and whether it meant anything other than four years of spent time. Many college graduates cannot analyze difficult problems, and some of them are barely literate. I know, I teach some of the best of these graduates every year. In short, a college diploma now has little meaning, and like all paper currency it is subject to devaluation. Consequently, the law degree has replaced the B.A. as good coin.

Law professors at most law schools today, Yale being an exception, teach from casebooks and the legal codes. Instruction from either one demands that the students learn how to read a text and how to distinguish right from wrong, success from failure, and winners from losers. The law student learns how to analyze and to find a principle and apply it to varied situations, and how to see an issue from multiple perspectives. Virtually none of these skills are taught, cultivated, or rigorously tested in most of our undergraduate institutions.

Several aspects of the current business climate further encourage the hiring and promoting of lawyers. This country is overrun with laws of all types, many of them as difficult to understand as RICO. Every business must obey volumes of tax, environmental, and regulatory laws issued by federal, state, county, and city government. Few companies and corporations can even conduct business without technically breaching at least some laws. As a consequence, many businesses find it beneficial to have a lawyer on staff to recognize and forestall any legal difficulties. This is critical in today's regulated business world when even a lawsuit or a technical breach of a law may bankrupt a company. Many employers have concluded that not having a lawyer may be more expensive than having one.

These varied reasons give credence to the argument that, although the Vice-President was correct when he said the country had too many lawyers, he spoke to the wrong audience. If the Vice-President wanted to decrease the number of lawyers he should have addressed the three sources that created the demand. First, he should have addressed the country's universities, where true learning is at a low ebb. Second, he should have spoken to the legislators in this country who continue to write laws that have few benefits other than ensuring full employment for lawyers. This should have been followed by the President's stated commitment not to sign any legislation that does not carry with it a clear analysis of the legal costs of compliance with the legislation and the likelihood of extensive litigation arising from the law. Third, he should have encouraged the President to appoint judges who believe the law should be interpreted and not written and rewritten by the courts.

Fortunately, we live in a country where demand gives rise to supply. Unfortunately, demand for lawyers is high because colleges are failing at their essential task, because legislators write volumes of opaque laws, and because judges continue to rewrite laws to fit their particular concept of justice. Mr. Vice-President, cut demand.

—*Stephen J. Safranek*

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by Samuel Francis

New World Baseball

For all the subtle grace that distinguishes Japanese civilization, the esoteric gabble of Western diplomacy seems to elude its leaders. Every few months, some titan of Tokyo pronounces his low opinion of America and Americans, unveiling his view that our schools are dreadful, our racial minorities backward, our politicians crooks, or our workers lazy.

Where they get such ideas I can't imagine, but unlike Americans themselves, the Japanese appear incapable of being trained to shut up about them. Yankees have long since learned that to utter such insights is to commit political and professional suicide. No small amount of the resentment Americans express at such attitudes may arise from their realization that our society is by no means as "open" as its high priests like to boast. Only madmen and barbarians may speak the truth and get out alive.

Last winter Japanese Prime Minister Kiichi Miyazawa, who entered office professing his admiration for the United States, loosed his lips on the floor of the Japanese Diet to the effect that he suspected Americans "may lack a work ethic," and from the wrath his remarks inspired, you would have thought he had ordained a second attack on Pearl Harbor. President Bush had some sharp rejoinders to the crack in his State of the Union Address, and in Detroit the United Auto Workers responded by setting up a Japanese car in their offices and encouraging visitors to pulverize it with sledgehammers.

But not all Americans were displeased with the Japanese. A few days after Mr. Miyazawa's musings, the city of Seattle revealed that its leaders were promoting an agreement with the Japanese chairman of Nintendo to buy the local baseball team. Seattle's mayor, the governor of Washington, and Senator Slade Gorton all joined to induce the baseball commissioner to let the deal go down.

The people of Seattle themselves seemed to be enchanted with the idea and openly resentful of the attempt by the rest of America to think harshly of our friends across the sea. The *New York Times* quoted Seattle longshoreman Ron Thornberry that "I'm personally not that happy with what they've been saying about our workers in Japan, but I do know that if America were to have some sort of protectionism against them, it would kill us."

Mr. Thornberry's sentiments make sense from the point of view of his own and his region's economic interests. The area around Seattle is heavily dependent on trade with Asia, Asians are the fastest growing minority in the state, and for the last decade state officials have eagerly courted Japanese investment. Nevertheless, the longshoreman's response illustrates what is wrong with free trade and, with all due respect to our self-appointed critics in Tokyo, with Americans who become addicted to it.

Free trade is not so much an economic policy as it is a political ideology. As William Hawkins has argued in a number of articles over the last decade, the free trade ideology was an integral part of 19th-century liberalism and its explicit rejection of the idea of the nation, the state, society, and the group. In the happy world of classical liberal ideology, writes Mr. Hawkins,

> Economics was to be separated from politics, wealth from power. . . . Liberals viewed people as equal individuals, not as members of particular national states. Civil society's only valid activity was the protection of individual rights; the nation-state had no independent status or mystical nature to which individuals owed any allegiance or duty that entailed any sacrifice of narrow self-interest. There would be no *national* interests, indeed no *international* relations—only "citizens of the world" going about their private affairs.

It follows from the ideology of free trade that there is no "national interest" in economics; there are only the interests of individuals. Hence, there is no way for the government to identify an economic policy that will reflect its national interests and no reason why it should do so, and when, in the give and take of commerce, another nation begins to devour parts of your own country to the point that the residents of those parts come to prefer the other country, there is nothing anyone can or should do about it. The logical—and today, the actual—result of free trade carried out as an ideology is the economic and eventually the political dismemberment of the nation that practices it.

Proponents of unlimited free trade with Japan try to counter this argument by claiming that Japanese investment in the United States is really much lower than what its opponents claim. They point out that Great Britain is the single largest foreign owner of American assets ($98.9 billion as opposed to Japan's $84.8 billion) and that the total domestic net worth of foreign ownership in this country is merely 5 percent of Gross Domestic Product.

Unhappily, they miss the point, which is that European states are not aggressively pursuing the acquisition of assets in the United States. Japan is. As economist Douglas P. Woodward writes, "Japanese companies have advanced more rapidly than any other source, with an annual growth rate (42 percent) far exceeding all major investor nations during the 1980s. In 1980, Japan held the seventh largest position. By the decade's close it had vaulted to second place, with $69.7 billion of U.S. holdings—17 percent of the total. The gross product of Japanese-affiliated companies in the United States also grew faster than any other nation from 1977-1987, but remained below the United Kingdom and Canada."

The state of Washington is one part of the United States where the Japanese seem to have made real progress, and the dialectic of free trade swings low over the whole Northwest. As the *New York Times* reported, "Increasingly, the American Northwest, along with British Columbia and Alberta in Canada, is trying to market itself to the world economy as a single economic unit, calling itself Cascadia." The region includes Alaska, Washington, Oregon, Montana, Idaho, and the two Canadian provinces, and it "'stands at the very geographical center of the new economic order,' said Paul Schell, a Seattle port commissioner. International boundaries, he said, mean very little."

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Just so. While Americans bemuse themselves that they have no collective economic interest, Japan has long since liberated itself from such 19th-century superstition and is aggressively pursuing policies intended to enhance not only its own wealth but also its power. It may not actually plan to dismember the United States and Canada, but the long-term effect of its policies is to promote just that result. As the fortunes of "Cascadians" fall hostage to the well-being of Japan and other Asian nations, so will their affections and their loyalties, and eventually political identity will go with them. Of course, there's no reason to think that the artificial "unit" of Cascadia will endure, any more than any other political unit founded merely on economic self-interest will last. As soon as patterns of trade, technology, and ownership change, Cascadia itself can be expected to disappear through the fiber-optic tubes of the New World economy.

It is entirely appropriate that ownership of the local baseball team should be the immediate reason for Seattle's love affair with Tokyo. The chairman of Nintendo no doubt understands that what a lot of Americans in the New World economic order really want is not national sovereignty or the protection of their national economic interests and identity but fun. Unwilling or unable to support their own baseball team, the good human resources of Seattle are perfectly happy to let the Japanese provide it for them, and anybody who challenges the offer is simply not a fun-loving American, let alone a productive resource.

If the ideology of free trade recognizes only individuals and their interests, it also implies that the only interests that matter even for individuals are those connected to consumption, and consumption in the postindustrial economic culture means fun. As long as Americans can cough up credit cards, live from paycheck to paycheck, survive on junk food, and stack their attics with every video game, electronic toy, and New Age gadget the wizards of Nintendo can weld together, what difference does it make how they earn a living? The slogan—perhaps the epitaph—of free trade logic is the bon mot reportedly uttered by one of its major champions in the Bush administration, Council of Economic Advisers Chairman Michael Boskin. Informed by critics of free trade that the Japanese were systematically taking over America's microchip industry, Mr. Boskin replied, "Potato chips, computer chips, what's the difference? They're all chips. A hundred dollars worth of one or a hundred dollars worth of the other is still a hundred dollars."

Mr. Boskin is correct that a worker who makes a hundred dollars producing potato chips is earning the same as one who earns a hundred dollars making computer chips, and each worker can use his earnings to buy whatever gadgets he wants (except American computer chips). From the point of view of the individual as consumer, there is no difference. But from the point of view of the society or the nation, there is, the most obvious being that Patriot missiles and the other high-tech toys of modern war don't run on potato chips.

National security alone thus refutes free trade ideology simply because the ability to muster the technical power necessary to protect national security contains and always will contain an economic component, and limitations on trade on the basis of defense considerations have been recognized as legitimate even by the architects of free trade since the days of Adam Smith.

But national security is not the only constraint on foreign trade and investment. There is also the matter of what we want to be and can be as a nation. After all, Haiti can produce potato chips, but it will be a long time before its population is able to turn out a computer chip, let alone design a better one. Free trade ideologues like Mr. Boskin believe Americans ought to be contented cattle happily punching buttons on the assembly lines in an economy based on fun and immediate gratification, but my bet is that he'd rather his own kids learned more about making chips for computers than slicing potatoes. At this historical moment, the design and production of computers happens to be the culminating pinnacle of Western and American science and engineering, and to claim that it makes no difference if we lose this industry is as much a renunciation of our identity and our heritage as teaching our children that Cleopatra was black.

Free trade doctrinaires, of course, care nothing for that identity and heritage if they can't think of a way to sell it, eat it, or copulate with it. In their economic vision, not only all human beings but all economic interests are equal, and none is entitled to special protection any more than any other. But as with egalitarian ideology applied to men and women, so with the same superstition applied to economic products. In the real world, some men and women are better than others and more deserving of protection, and some economic products, skills, and ideas are worth more than others. Contrary to Jeremy Bentham, a father of free trade ideology, there is a difference between pushpins and poetry, and there is also a difference between computer chips and potato chips.

Classical liberal economics certainly has its merits, but it and its parent political ideology have long since been discarded in almost every aspect of economic policy except trade. It just so happens that it is the free trade part of classical liberalism that comports well with the interests of emerging transnational elites. Bureaucrats at the United Nations and the other transnational institutions that speckle the horizon, the managers and investors of multinational corporations that depend on trade with foreign nations and have ceased to be American in any sense other than their post office boxes, and the tribe of lobbyists that haunts the District of Columbia (and the campaigns of almost all of this year's presidential candidates) all stand to make more money and gain more power through policies that promote the dismemberment of the United States through free trade (and through massive immigration and political denationalization) than by strong affirmations of national interests and identity. Through their combined economic and political interests, they have begun to disengage from the underlying soil of their nations and cultures and to form a new block of interests that transcends national boundaries. To them, as Mr. Schell avers, international boundaries "mean very little."

What global free trade and the other instruments of denationalization promise, therefore, is not the "end of history" or the triumph of democratic capitalism forever and ever or a "neutral" or "minimal" state umpiring a "level playing field." What marches in their train is the emergence of a new world power bloc separated from and in contradiction to the power, interests, and civilization of particular nation-states and the prospect that the new transnational power will eventually preside over the decomposition of nations. How long the new elite will let us play baseball in its new regime is a question most Americans have not yet begun to ask.

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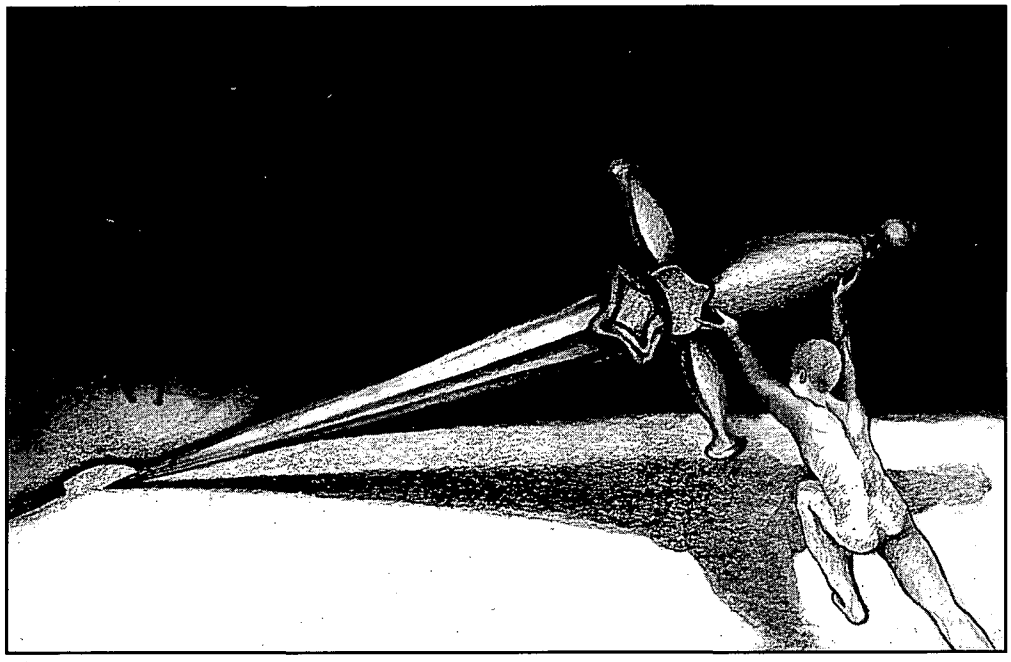
Law and/or Order

by Thomas Fleming



Anna Mycek-Wodecki

All civilization rests upon the executioner. Despite our feelings of revulsion, "He is the horror and bond of human association. Remove this incomprehensible agent from the world, and at that very moment, order gives way to chaos, thrones topple, and society disappears." Joseph de Maistre's insight has alarmed most readers—among them not a few Catholic reactionaries—who have encountered it. There are, it hardly needs to be said, more cheerful terms in which to define civilization, such as the beauty of its arts, the morals of the people, the strength of its institutions, but in practical terms, Maistre's pronouncement will work as well as any. Without law, without a firm commitment to enforce justice by punishing malefactors, no civilization, indeed no human culture, can be said to exist.

But we can go further than this. In a very real sense we can define the qualities of a culture in terms of its punishments. Some societies—the Japanese and many Amerindian tribes, for example—have exulted in torture as something delightful for its own sake; in others (the Comanche) justice is the rule of the strongest, and a weakling man without friends is powerless against a larger man; in 18th-century England, under the influence of Locke's theories and the interests of the rising capitalist class, crimes against property were more often capital than crimes against persons.

In the modern United States our criminal justice system is a perfect metaphor for the whole of society. Crimes are regarded, today, not as acts of injustice requiring retribution, but as social problems to be addressed or the symptoms of a disease that needs to be treated. The old concerns—the public's safety, the satisfaction of justice, recompense to the victim—all are subordinated to the overriding concern of rehabilitation. Ours is a society that increasingly assigns to government the fundamental responsibility for rearing children, treating the sick, and healing the moral and mental ailments that lie at the root of alcoholism, drug addiction, racial insensitivity, and crime. The state, on this understanding, is a vast therapeutic machine designed to reform the defective character of the people.

Criminals are only the most available class of Americans upon which the state experiments, and the innovations tried upon drug dealers, rapists, and murderers today will eventually be practiced against social drinkers, uxorious husbands, and religious enthusiasts. At the center of all our institutional apparatus are the warehouses and factories of coercion, in which human nature is reforged. The 19th-century poorhouses, the early 20th-century reform schools, and the contemporary gulag of schools, prisons, and treatment centers are all devices created by modern European and American governments to control and re-form the lives and characters of the unruly, the nonconformist, and the insubordinate.

It is no accident that the earliest advocates of prison reform were a coalition of Enlightenment *philosophes* and nonconformist religious eccentrics. John Howard, the conscience-tortured nonconformist who authored *The State of the Prisons*, and the materialist utilitarian Jeremy Bentham disagreed on almost everything else under the sun, but on the need to reform

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the lawless by sticking them in little rooms all by themselves—on this point they were in complete agreement. We have God to thank that philosophers are only rarely kings, since Bentham's plan for a totally controlled prison, his famous panopticon, was a nightmarish model for the total state.

The term penitentiary is no euphemism, for it was not designed as a house of punishment but as a place where prisoners would be compelled to brood upon their transgressions. Solitary confinement was the key to the early penitentiary; at the English Pentonville, prisoners upon admittance were immediately dispatched to a solitary cell for a period, originally, of 18 months, although as more and more prisoners went insane, this was reduced to nine months. Once out of solitary, the prisoners were still deprived of human contact: they worked alone at their tasks and had to wear hooded masks whenever they assembled—to prevent the formation of any social relationships. The rule was simple: no communication of any kind was tolerated.

Such coldly inhuman treatment aroused the ire of radicals and reactionaries alike. Even the utopian liberal, William Godwin, realized that human character, which is formed by society, could only be degraded under such conditions. Every generation since Godwin has called for prison reform. Tocqueville's visit to America was occasioned in part by his desire to study the new-model prisons, and he records the observation that criminals came out of these prisons more hardened and vicious than they went in. After two centuries of reform efforts, the same complaints are being made. Prisons are inhumane and overcrowded graduate schools in felony, which degrade the inmates without deterring crime.

Things are, of course, worse in our own day. By the end of the century, the inmate population (including prisoners on furlough, parole, etc.) of the United States will surpass four million, and the annual cost for the corrections apparatus will reach $40 billion. They could all be sent to a state university for that figure. No one is happy with the system. Liberals complain that it is brutal and inhumane—and they are right—while conservatives insist that liberal remedies, such as furloughs and work-release, are turning vicious criminals loose upon the public—and they are also right.

We all know the system doesn't work, but the only alternatives are, on the one hand, more prisons and longer sentences, or on the other, more coddling of murderers, armed robbers, and rapists. The public debate over the Jeffrey Dahmer case in Milwaukee is a perfect illustration. One side insists Dahmer knew what he was doing and ought to be put away for life; the other declares he is insane and ought to be put in an asylum for at least a year until he straightens out.

But aren't most criminals at least a little bit crazy? A stockbroker, who can honestly earn a hundred thousand (or many times that) a year must be unbalanced to jeopardize his career by engaging in insider trading, and the same argument could be applied to virtually everyone except drug dealers, whose cost-benefit calculation strikes me as entirely rational: let's see, four bucks an hour at McDonald's or fifty grand for a few days' work. Even at the risk of a few years on the inside, it is an easy decision.

Of course a homosexual cannibal who designs a temple of death is crazy, crazier than a mad dog that we would unhesitatingly put to sleep. Execution is the mildest punishment Mr. Dahmer deserves, and anything less is an outrage against our sense of justice. But Wisconsin gave up the death penalty, and the best the citizens of that state can hope for is a verdict that will give them the privilege of supporting Mr. Dahmer for the rest of his life. I say, turn him loose with a ten-second head start in front of his victims' relatives.

The usual conservative remedy for the problem of crime is more police, but what good can the police do in Milwaukee, where they are ordered to protect the life of Mr. Dahmer? In most cities now, the primary function of the police is that of protecting violent felons from the just revenge of their victims and their kindred. The vast police network of the United States only exists, it sometimes seems, to check drivers' licenses or arrest good parents who love their kids enough to spank them. I am not blaming the police officers themselves; they are only carrying out laws made by judges and legislators, in that order. What we don't need is more police but more executions.

Mutilation, it will be said, is barbaric, but how many men would not give up a hand or even an arm in preference to spending seven years in a state prison as the wife of Mike Tyson?

The sterility of most "thinking about crime" is revealed by the hostile refusal to consider any but the narrowest range of options. In the exclusive concentration on the merits and defects of the present system, the whole point of the system has been lost sight of. There are a number of different ways of breaking down and classifying the objectives of criminal justice, but the primary categories would seem to be: retribution, compensation, protection, and humanity. None of these is secured under the current regime. Five to ten years of imprisonment for murder or three years for rape is simply not satisfactory as retribution. It is possible to work out a loftier scheme than the *lex talionis* according to which the man who accidentally puts out another's eye must lose his own, but it is not for nothing that we imagine justice to be weighed out on a balance. The severity of the crime must be matched by the severity of the punishment; otherwise the victim and his family can never be satisfied.

Victim compensation was all the rage in the 1980's, but very little was actually done to compensate either victims or their families for the wrongs that had been done. No compensation has been proposed for the investors who lost out because of insider trading, for the old ladies who paid a band of gypsies to resurface their driveways or repair their roofs, for the parents whose children were murdered in school because the principals and superintendents refuse to protect the students from violence, or for the women whose lives have been turned into an unending nightmare by a generous parole board collaborating with an AIDS-infected rapist who had a string of previous convictions.

The truth is that we are not free to walk our own streets in safety; large numbers of students now carry guns and knives to school; rape has become so prevalent that it is treated as a

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minor crime, the subject of jokes and televised trials. However, the same book out of which we read the rights to rapists and murderers gets thrown in the face of anyone who challenges the regime either by protesting taxes or making an insensitive remark.

Last and least, a criminal justice system for a civilized people should be humane, that is, it should not violate the integrity of our human nature. Human beings are, in principle, autonomous souls with an inherent right to make their own decisions and to abide by the consequences. Any attempt to reform them against their will is inherently evil, because it denies the "personhood" of the offender. The whole underlying notion of rehabilitation is not merely bogus — few people, after all, can actually be reformed by an institution — it is profoundly evil. If I have robbed or injured someone, then let me pay a just penalty; that is society's right. What no one has a right to do is to fiddle with my conscience, by sleep-teaching, hypnosis, drugs, therapy sessions, or solitary confinement. If my character is so bad that it must be altered by force, then kill me and be done with it, but do not try to rob me of my soul. If ever there were a punishment that could be described as cruel and unusual, it would be long-term imprisonment combined with the ministrations of counselors.

Since none of these objectives is being met by the current system of imprisonment and parole, it is time to think of alternatives. We do not have to reflect very long to recall that throughout human history, societies have had recourse to a variety of punishments and only rarely experimented with prisons, except as holding tanks for criminals awaiting trial or sentencing and convicts awaiting execution. These methods ranged from the pillory to the gallows and could easily be reinstituted in a system designed to meet the peculiar needs of postcivilized man.

Shame is the ideal method of punishment for lawbreakers who still have a conscience or a sense of face. For juvenile offenders, nothing could be more effective than to subject them to the pillory in their own school yard or expose them to ridicule on closed-circuit television shown to their gym class. The same techniques could be applied to older but nonviolent criminals who value their reputation. Peculating congressmen, teachers, and clergymen who violate the trust we put in them, and all such pillars of the community, could be degraded in various ways on a special segment of the evening news. They might also be compelled to wear some badge of shame, wherever they went, to warn strangers against their wiles.

For many of us, however, the pillory needs to be accompanied by a more forcible reminder, and it used to take months to heal a set of stripes inflicted by a good flogger. More than fifty or sixty lashes is probably excessive, although the English used to lay them on by the hundreds. For white-collar criminals, the harshest punishment would be the payment of confiscatory fines levied upon their incomes for a period of years. (Defaulters would face sterner measures.) The few million paid by Mr. Boesky are not enough, and the money should not have gone to the government but to his victims.

Some thought should also be given to compensating victims of theft and violence. If someone invades my home and steals the television, it is not enough just to get the set back. The burglar must be made to pay me for the inconvenience and the fright. A few thousand dollars, enough for a week in Paris, might make me feel so good that I would look back with pleasure on the event. Criminals guilty of capital crimes might be made to sell off their organs,to a hospital and give the money to their victims' families. It sounds grisly, but not nearly so grisly as rape and murder.

Next in order of severity among traditional penalties is mutilation, the loss of a limb. A career pickpocket, if deprived of a finger or two, might consider another profession, and if he did not he might find himself with no hands at all. If we shrink from applying the death penalty to a first-time rapist, then there is an obvious piece of surgery that could be performed.

Many political crimes could best be treated by banishment, and it would be small loss never to see the faces of Alan Cranston or Tony Coelho in these United States, but for many serious crimes the only just and fitting punishment is death. These are all, it goes without saying, crimes against persons and all involve death or the threat of death. As a bare minimum, murder, rape, armed robbery, kidnapping, and arson should all be capital crimes, because in each case the criminal has either killed or threatened to kill his innocent victims. For everything but murder, we might well wish to consider mitigation for many (although not all) first-time offenders, but a man who makes a habit of sticking a pistol up a 7-Eleven clerk's nose will sooner or later pull the trigger.

My father always told me never to point a gun at anyone and never to threaten anyone unless I meant to carry through the threat, because—he said—the minute you point a gun at someone, he can only assume you are willing to kill him. Under those circumstances, he has the right to kill you first. The same reasoning applies to armed robbers, muggers, and rapists, who make us slaves to terror by telling us, "Do what I want or I'll kill you."

A liberal use of the death penalty for violent crimes ought to be the least controversial of my suggestions. I don't know how many would-be murderers and muggers would be deterred by the knowledge that the careers of five or ten thousand of their colleagues had been interrupted by a rope (gas chambers and electric chairs are too expensive, and their technology smacks of a bad conscience), but at least that five or ten thousand would no longer be practicing their profession. That much is certain. But no society can make a claim to the most rudimentary sense of justice, if it fails to kill the killers as a matter of routine.

Of course, there may be mistakes, and an occasional innocent man will be executed, although it is remarkable how many wrongly convicted criminals are thugs who got fingered for the wrong job. Mutilation, it will be said, is barbaric, but how many men would not give up a hand or even an arm in preference to spending seven years in a state prison as the wife of Mike Tyson?

What do we do in the long interim between the present injustice and the eventual restoration of sanity, which will only take place after the entire collapse of what we continue to call "civilization"? If each generation of revolution and reform in penology has alienated us farther and farther from the fundamental principles of justice, can we go back, if only in our own minds, to the basics?

The foundations of criminal justice are to be found not in the sovereignty of the state but in the rights and duties of individuals and families that must protect themselves against aggressors and take revenge for injuries received. The Greeks never entirely gave up the notion that murder was, after all, an affair between families, and they invoked the city's judicial apparatus only as an efficient and peaceful vehicle for handling the negotiations. The Romans, who made more of a science of their

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law, went further in transferring authority to the state, but they never repudiated the right of each man to repel force with force.

The Germanic conquerors of Europe brought with them more personal and familial legal notions that would not have seemed entirely strange to Romans of the early Republic. Anglo-Saxon law was slow to abandon the idea that the main object of criminal justice was the placation of the victim. Our ancestors were for the most part rough men who were all too willing to exact bloody revenge from those who had offended them, and the Franks, Lombards, and Northmen of the continent, as well as the Anglo-Saxons, Picts, and Scots of Britain, were happy to kill their enemy or wipe out his family, if their claims were not satisfied. In more traditional parts of the United States (the West and the South) dueling did not fall entirely out of fashion until near the end of the last century, and committees of vigilance have been keeping the peace since before the Revolution.

Law and order are usually better than order without law, but what are we to do when we have law without order? Obedience is a great political virtue, and I have more than once described the more aggravated forms of civil disobedience as tantamount to treason. However, the duty of self-defense—and revenge—precedes the state, and if we have delegated this responsibility, we have not abrogated it. As John C. Calhoun observed of states' rights, "to delegate is not to part with or to impair power."

The classic text on Christian obedience in Romans chapter 13 says:

> Let every soul be subject unto the higher powers. For there is no power but of God. . . . Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same. For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain.

But what if the state does hold the sword in vain? What if government wields the sword only to protect physicians who grow rich by killing unborn babies, pornographers who prostitute children, and the army of vandals that is now waging a reign of terror in American cities. Ordinary Americans are beginning to understand that if they want to protect their homes or keep their neighborhoods safe, the police cannot help them, and the law won't. And if, after all the precautions in the world, one of the savages should break in and—God forbid—murder a man's wife and children, he may have to pick up, for a time, the sword the state has cast aside. ◈

For the Creator of *Bringing Up Father*

by John Nixon, Jr.

Remembering one Pop U. Larity
And other regulars at Dinty Moore's,
Where Jiggs went often to avoid the bores
At Maggie's soirées, I again tee-hee,
McManus. Have we lost the recipe
For good corned-beef-and-cabbage and the scores
From which sopranos sang till they were hoarse
And Jiggs departed, most ungallantly,
For Dinty's place? I'd say, McManus, thou
Shouldst be cartooning now—when Jiggs's pals
(No one would raise an eyebrow at this late
Date) could include hot hookers who would wow
Males of all ages. The Availabelles.
Their madam? You've got it. N. Della Kate.

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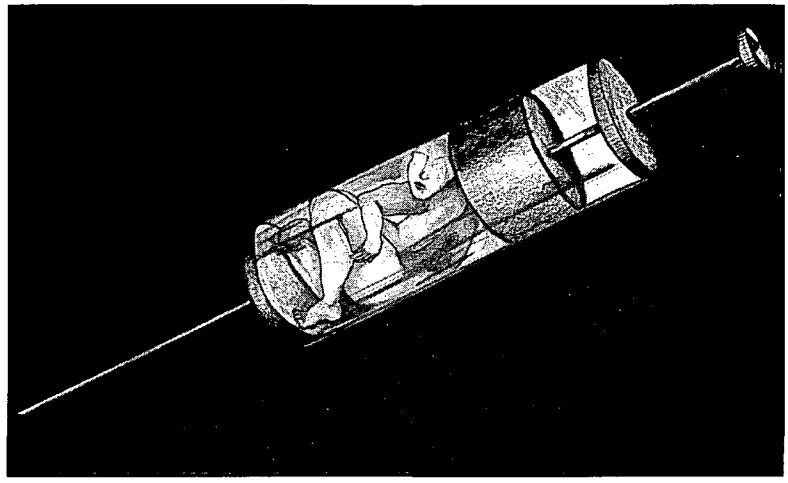
Fighting Drugs, Taking Liberties

The Effects of the Drug War

by Philip Jenkins



Anna Mycek-Wodecki

In the early 1980's, the Reagan Justice Department announced a far-reaching "war" to free the United States from illicit drug use. There was skepticism at the time that government actions could cause such a fundamental change in entrenched public attitudes and behaviors, and there were different views about the means by which such a war could be fought. Should it be aimed primarily against producers or consumers, major dealers or street-level entrepreneurs? These doubts notwithstanding, there were few initially who dared to oppose the notion of a war as such, few overt "pacifists" who felt that in drug policy as in international affairs, there is no such thing as a good war or a bad peace.

A decade later, we can begin to assess the consequences of the drug war, and victory seems as far off as ever. Some slowing of the cocaine supply is indicated by increased seizures by law enforcement, a rise in street prices, and a decline in emergency room admissions. On the other hand, surveys suggest that regular hard drug use continues to grow; while the official focus on cocaine may actually have benefited the other illicit entrepreneurs who supply less publicized substances, above all heroin, methamphetamine, and the "designer" drugs. It is these sectors of the black economy that now seem poised for a renewed conquest of the market.

Even if the war had resulted in absolute and unconditional victory, its far-reaching consequences would still be deeply disturbing for observers of all political stripes. A liberal critique is certainly possible here. Personal liberties have eroded at a rate unparalleled since the McCarthy era, with a corollary growth in the powers of police and law enforcement agencies. But conservatives should be equally alarmed. Many who might welcome a reassertion of traditional authority and moral standards should be appalled by the unconstitutional means by which this goal is being achieved, the undermining of familiar legal principles, and the dramatic expansion of federal power in law enforcement. Some of the nation's most conservative judges have declared themselves horrified at the savage and disproportionate punishments they have been required to impose on narcotics offenders by mandatory sentencing laws.

Beyond the purely legal arena, the war on "substance abuse" has employed notions of reeducation and therapeutic power that should be anathema to libertarians, conservative or otherwise. Substance abuse issues have permitted the subversion of older notions of personal liberty in areas as far afield as religious self-expression and reproductive freedom. That the brunt of the drug war is borne by the poor and minorities is bad enough; but it is by no means the only reason to call for an immediate armistice. The drug war subverts law, threatens civic order, and tramples justice.

The primary beneficiaries of the drug war have been police agencies and prosecutors, especially at the federal level. They have benefited in resources and manpower: federal spending on all forms of drug interdiction and enforcement reached ten billion dollars by 1990, a fivefold increase over 1984. Police have also acquired an impressive arsenal of new legislative devices. Historically, these developments are by no means surprising. The history of policing in the United States is filled with crises over moral enforcement, which frequently reflect more or less disguised social or ethnic conflicts. Temperance, Sabbath-breaking, blue laws, juvenile delinquency—all played a crucial part in the difficult task of persuading a truculent republic that professional police were necessary and were not incompatible

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with a democratic society. In the words of sociologist Howard Becker, "The final outcome of a moral crusade is a police force."

This is especially true of federal law enforcement, which is largely the creation of successive crusades and moral panics over the last century. In 1900, the Secret Service was virtually the only national enforcement agency, and the "Bureau of Investigation" created in 1908 remained a cipher for many years. Even a society that had reluctantly accepted the idea of policing still felt that national agencies would inevitably lead to a form of police state. Matters were changed decisively by a series of morality campaigns, and the bureaucracies they engendered. In 1910, the Mann Act was directed against a chimerical wave of white slavery, which was to be countered by the activities of federal laws and officials. This would also be the pattern of antidrug legislation in 1914 (the Harrison Act) and the 1919 attempt to prohibit alcoholic drink (the Volstead Act). In the 1930's, the FBI had its powers expanded by federal laws because of an imagined wave of kidnapping; and the minuscule Federal Bureau of Narcotics began its war against the alleged horrors of marijuana. Spy and subversion panics in subsequent decades permitted the creation of political police forces at many levels of American government — federal, state, and city.

More recently, the alleged menace of organized crime and drug trafficking permitted the enormous expansion of the federal agencies, armed with the draconian powers laid out in the Organized Crime Control Act of 1970. This last was a classic piece of "moral panic" legislation, an ill-conceived package of measures that few dared oppose for fear of appearing to support rather than control "organized crime"—a nebulous concept that is nowhere defined in the law itself. While it predated the actual drug war, it is only in recent years that the act has been fully employed. Most devastating have been the extreme criminal penalties and civil sanctions levied against any organization deemed to be a "Racketeer Influenced Corrupt Organization" (RICO). The law has been ruthlessly abused by federal prosecutors, who have employed RICO against a wide and somewhat bizarre array of political targets on right and left, from Vietnam War protesters to Croat nationalists, Nazi militants, Weathermen, Teamsters' locals, and anti-abortion protesters. There is in addition a private "RICO bar," attorneys who soon noted the law's utility in civil litigation and began suits against such "racketeers" as Morgan Stanley and Shearson Lehman. Not even the Liberty Lobby in its wildest nightmares ever conceived that federal legislation might provide so many weapons for use against private business.

RICO is only one of a battery of laws employed by federal prosecutors against drug trafficking, and there are in addition a number of state RICO or "drug kingpin" measures, all ultimately based on the 1970 law. Throughout the 1980's, such measures passed with astonishing ease, as few legislators were prepared to be named as opposing "tough" antidrug laws. Debate, such as it was, often focused on attempts to increase already stringent penalties.

Most of these laws shared common underlying principles and assumptions, which combine to make the world of "narco-justice" distinctly alien from Anglo-American legal traditions. Most significant, the defendant is effectively presumed guilty until proven innocent. RICO permits the seizure of assets prior to conviction, which places overwhelming pressure on a suspect to come to terms with the prosecutor without going through the inconvenience of a trial. Asset seizure also reduces the suspect's ability to secure adequate legal counsel. In any case, this right is constantly weakened by the government's new powers to demand information about the sources of money paid as legal fees. At every stage, traditional lawyer-client privilege has been undermined, a blow against a fundamental underpinning of the defendant's rights. As former Attorney General Edwin Meese repeatedly stated, society must adopt an attitude of "zero tolerance" for drug offenders (this policy must be distinguished from the standards prevailing in matters of political corruption, where even an actual conviction seldom dents a career).

The principle of pretrial asset seizure has been applied at all levels of wealth, from stockbroking firms allegedly involved with Ivan Boesky or Michael Milken, down to public housing tenants who face eviction on suspicion (not conviction) of drug dealing. Naturally, common sense would indicate that such cases pose a danger of injustice. Due process and the necessity of proof have customarily been regarded as bulwarks against an overmighty executive or the malicious prosecutions of greedy neighbors. Is it really that difficult to contemplate a landlord or neighbor so anxious to remove a tenant that he is prepared to make false charges of narcotics activity? On the other hand, Justice Department spokesmen reject such objections with a simple and powerful doctrine. The Constitution does indeed provide the defendant with rights, such as the presumption of innocence and the right to secure counsel of one's choice; but the threat posed by drugs and organized crime is so severe that rights must be suspended in such cases. Constitutional protections do not therefore extend the controversial or politically charged criminal cases. We are at war, which means that drugs are special; drugs are different.

Drugs are so different, in fact, that private citizens and corporations must obey the whims and edicts of officialdom, even when they have not troubled to invoke a law like RICO. This was nicely illustrated by a 1985 incident when U.S. Attorney Rudolph Giuliani was investigating an alleged money-laundering conspiracy involving the Italian Mafia, the "Pizza Connection." The conspirators were said to have transferred money through the firm of E.F. Hutton, which duly notified its clients that they had received subpoenas in this matter. Federal authorities were outraged that the firm had contacted its clients "contrary to the specific request of the United States government." Normally, private concerns are assumed to have obligations to their clients, which can be overridden only by legal warrants and injunctions. In this case, the word of the prosecutor is assumed to be law, and disobedience verges on *lèse majesté*. There is an old maxim that "the will of the prince has the force of law"; but it has not hitherto been popular in this country.

So drugs are different: they provide a bogeyman that persuades courts and legislators to accept draconian "wartime" incursions into personal liberty, justified by the necessity to combat the alleged moral danger. Again, this is not a new phenomenon. If we consider the leading Supreme Court decisions in the area of personal rights and liberties over the last century, we find that cases commonly arise from moral crusades over issues like drink, drugs, and pornography. The *Olmstead* wiretapping case of 1928 concerned bootleggers; most of the landmark search and seizure cases of the last quarter of a century ultimately stem from drug arrests and so on. A crusade thus creates conflicts that reshape the law and the Constitution just as irrevocably as it reorients policing. Emergency "wartime"

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measures are enacted, and then justified by courts, only to create a precedent for future restrictions on liberty or constitutional rights. Drugs are by no means the only such area, as issues like drunk driving and child abuse have both been used in such a way; but drugs offer perhaps the clearest recent illustrations.

Private gun ownership has been one target of the crusaders. It was the bootlegging era that called forth the first sweeping state and federal laws against the possession of particular types of weapons, such as machine guns and sawed-off shotguns. More recently, antigun forces have latched onto the drug war as a vehicle to destroy the Second Amendment. We have heard that semiautomatic rifles or even pistols are "the weapon of choice of the drug dealers," "narcoterrorist assassination weapons," so naturally they must be prohibited. Absent this reform, there must be lengthy waiting periods in which police can check the backgrounds of prospective purchasers. It is difficult to imagine even the antigun lobby believing that this will make the slightest impact on "drug violence," if only because dealers and urban youth gangs seldom obtain their weapons by legal means. However, the net effect is that cynical use of antidrug rhetoric has succeeded in restricting an explicit constitutional right.

The First Amendment has also been under assault. In 1990, the Supreme Court denied the right of Indian groups to make use of peyote in their religious rituals (*Oregon Employment Division* v. *Smith*), an important decision that the mainstream press scarcely accorded the attention it merited. Now, it would be difficult to argue that the Republic stands or falls on whether one small cult can employ what it believes to be a sacrament. However, this is yet another example of the drug issue being used to create a very large bridgehead in civil liberties. Every court will hold in theory that religion cannot be regulated, or even taxed—but where drugs are involved, normal principles go by the wayside: drugs are different. The precedent is thus created for the regulation of other behaviors that may be unpopular in particular regions or social groups. The ratchet turns one notch, where it remains until ready to be advanced in the next panic; the process seldom goes in reverse.

The *Smith* case effectively reversed the classic decision of *Sherbet* v. *Verner* (1963), which held that the free exercise of religion could only be restricted if there was a compelling public interest in so doing, and even that restriction must be imposed in the least onerous fashion possible. In contrast, the new doctrine affirms that religious groups must learn to live with any "incidental" burdens arising from any "reasonable" law, a statement that has caused near panic among churches and religious scholars. *Smith* threatens to "gut" the First Amendment: it establishes the principle that religious liberty is less a right than a conditional privilege that only applies until it reaches the roadblock erected by the latest fit of public morality.

What next? One natural consequence would be for a "dry" state or county to command Catholic churches to use only unfermented grape juice in their services. Clearly, this would be an invaluable educational tool, removing the apparent sanction given by the churches to substance abuse and other antisocial behavior. At present, there are harrowing reports of teenagers and children being supplied with wine, and adult parishioners are even reported to *drive* shortly after sharing the alcoholic beverage! Can such a Mothers Against Drunk Driving law be far in the future?

And the peyote precedent suggests other necessary exceptions to outmoded constitutional liberties, other "reasonable" laws that might pose "incidental" problems. With child abuse said to be so commonplace, surely few will object to far-reaching measures to safeguard the children. Already, such laws have gravely undermined the privacy of conversations between clergy and parishioners in counseling settings, and have threatened the secrecy of the confessional. Barely a tenth of the mandatory abuse reporting laws passed during the 80's recognized clergy privilege. Furthermore, it cannot be long until truly effective legislation will call a halt to the practice of infant circumcision for ritual reasons. Catholics and Jews may object to such reforms, but this confirms once again their fundamentally un-American character. How much better protected we will be without the archaic superstitions of the First, Second, and other Amendments.

All prosecutors are ultimately political animals who know that no votes are to be lost by appearing tough on issues like drugs and child abuse. Unfortunately, the costs of this judicial Rambo-ism are ultimately paid by individuals, and by the law itself. From a great many examples in recent years, we might choose the cases of women who use drink or drugs while pregnant, only to find themselves facing prison time for some such offense as "delivering narcotics to another person" (namely, the fetus). Some Indian reservations have seriously discussed incarcerating alcoholic women at an early stage of their pregnancy, to curb the occurrence of "fetal alcohol syndrome" (FAS).

Now, it might appear that we have here a classic feminist issue, an example of women being regarded as communal broodmares on a scale paralleled only in nightmare fantasies like *The Handmaid's Tale*, while the treatment of the early fetus as a person goes far to subverting *Roe* v. *Wade*. In reality, feminist silence on the issue has been deafening; but perhaps that is not so surprising. Is anyone really prepared to speak up against laws that simultaneously denounce substance abuse and child abuse? At the same time, we have a cacophony of learned voices assuring us of the scale of problems like FAS and the "crack baby." Both are questionable concepts. The "crack baby" remains a largely mythical image, a consequence of the sudden discovery that (regardless of drug use) poor urban women tend to receive inferior nutrition and medical care, and accordingly deliver children who are punier and sicker. With proper care and nourishment, the babies will outgrow these early problems; and the notion that crack is causing the birth of hundreds of thousands of congenital monsters each year is hysterical nonsense. But mere facts have seldom stood in the way of a good legislative panic.

Surely, there is a positive side to the story. Yes, it is regrettable that the drug war has its innocent bystanders, its occasional victims of friendly fire, but does not the innocent citizen benefit from a stronger justice system, from a greater degree of law and order? This attractive argument is belied by the realities of big cities, where drug offenders have so swelled the jails that robbers and burglars have had to be freed in appalling numbers. Since the 1970's, federal courts have maintained a tough attitude towards prison overcrowding, to the warehouse mentality that has created such American Gulags as New York City's Rikers Island. Many courts have ordered that when the jail system reaches a particular population, inmates must be released, either by reducing bail to fire-sale proportions, or actually by having the city pay offenders' bail for them. This

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scheme was barely workable before the drug war, but the influx of petty dealers and couriers has brought most urban court and jail systems to a state of collapse.

In a city like Chicago or Los Angeles, it is all but impossible to impose pretrial detention for anything except the most egregious act of violence, and often not then. There have been notorious cases of burglars arrested up to eleven times within two months, without spending more than a day in custody for each offense. Car thieves are rarely even detained, so that this activity has effectively ceased to be a criminal offense in most large cities. In Atlanta, there are now in excess of 25,000 outstanding fugitive warrants, and next to no chance that any large number of these individuals will ever be taken. And without bail, why should they turn up for trial? Philadelphia has 35,000 outstanding warrants, and *thirty* officials trying to round them up. The effects of this situation on police morale can only be imagined, to say nothing of the impact on courtroom personnel, probation, parole officers, and, of course, on the civilian victims who fondly imagined that the police arrested criminals with a view to taking them off the streets. Poor naive idealists!

None of which should imply that America's judges are softhearted libertarians who turn dangerous criminals loose to rape and kill. While pretrial detention has collapsed, American prisons continue to fill to many times their capacity, and all accounts agree that drug offenders are the largest single element of the problem. Any state will provide an example. The California system could barely cope with the 25,000 inmates it had in 1980; yet it had 81,000 by 1989, and faces 100,000 in the imminent future. New Jersey went from 10,000 in 1984 to 15,000 in 1989, with narcotics sentences accounting for virtually all the increase. Taking federal and state prisons together, there were 210,000 inmates in 1974, 454,000 by 1984, and over 800,000 by 1991. This final jump is staggering, as it coincided with a general demographic decline in teenagers and young adults who provide so large a proportion of the criminal population. By any rational standard, both crime rates and prison populations should have been plunging since mid-decade.

Including jails, America's incarceration rate now stands at almost six hundred per hundred thousand, and the rate of growth shows no signs of slowing. To put this in international perspective, the American rate a decade ago was exceeded only by that of a few choice utopias, including the former Soviet Union, Albania, and South Africa. Today, by contrast, this is one enviable area of international competitiveness where the United States has no close rivals left, and comparable European nations have rates perhaps a tenth as large. In terms of the cost of incarceration to state and federal budgets, suffice it to say that it would be cheaper to keep the offender in liberty, while the government pays him a decent middle-class salary as an incentive to stay out of trouble, and subsidizes the occasional Caribbean vacation or skiing trip. Nor does this equation take account of factors like lost productivity, or welfare payments to the offenders' families. There must be cheaper ways to purchase anarchy.

Space forbids a comprehensive catalog of the havoc wrought by the drug war, and the Manichaean attitudes it has helped inculcate. However, we must include the impact on foreign policy, especially in Latin America. Excesses and illegalities can no longer be justified in terms of the communist threat, and even the specter of "international terrorism" is looking rather pallid. Nevertheless, the drug war seems set to replace the Cold War as the all-purpose excuse for administrations of either political party. We have already seen the United States undertake an invasion of a sovereign nation for the ostensible reason of winning a military battle in the drug war. Different views are possible of the brief war in Panama—although no rational planner could have believed that this might have had any impact whatever in the cocaine supplies reaching these shores. However, this was a telling augury of the future course of U.S. policy in this area: the use of the drug war to disable opposition to intervention in Latin nations.

We have seen the Reagan administration smear the Sandinistas with charges of drug dealing in order to raise funds for the Contras, and the quite as chilling response from the left that it was those very Contras who were indeed the worst "narco-terrorists." Thus neither side challenges the essential orthodoxy that to traffic in drugs is to be in league with Satan and to earn the undying enmity of the United States. As revolutionary forces gain strength in Peru, American personnel are already being dispatched to that same country in the guise of drug interdiction forces, agents of the Drug Enforcement Administration, "advisers" to local soldiers hunting narco-traffickers. It is by no means fanciful to imagine that the familiar helicopter gunships will soon be swooping once more over ocean-like jungle wildernesses, though this time marked with the insignia of the DEA rather than the Army or Marines. The American response to this intervention to date has largely been one of thorough indifference, combined with vociferous support from some Democrats and urban liberals who would have had apoplexy at a "new Vietnam" in any other context.

The war continues because it is invaluable for any group or individual with the *nous* to claim (however implausibly) that their particular cause or obsession is somehow connected to the drug platform. It continues because it offers careers and official positions, votes and research funding.

This is not to say that American intervention may not be necessary in Peru or Bolivia, but at least let it happen after a frank discussion of the issues and risks involved and not simply because of some scare story such as "Shining Path supplies x percent of the cocaine flooding American cities." Need it be added that a war in this region would bear a much closer resemblance to the Vietnam morass than the recent walkovers in Panama or Iraq?

How did we get a drug war? Was it indeed—as it sometimes seems—the brilliant stratagem of a hostile power, determined to cripple the American economy, subvert the Constitution, and spread violence and crime across the cities? If only the explanation were so rational. No one force or pressure group was to blame, and in fact the success of the war can only be explained in terms of the very diverse movements at work. There certainly was conservative and moralist pressure to enforce the widely flouted drug laws and to purge the culture of its easy tolerance of drug abuse. The rigors of

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the drug war were part of a national penance required to make amends for the excesses of the high-flying 1960's and the Sybaritic 1970's. In some cases—especially in the Meese Justice Department—there may also have been a hidden agenda of using the drug war to enhance police and prosecutable powers limited by the Warren Supreme Court. However, the activists were also able to tap into well-established currents of temperance and morality enthusiasm in American society, the sort of movement that has found prominent expression in groups like M.A.D.D.

But conservatives represented only one arm of the "nutcracker." As America is the land of Puritanism and Prohibition, it is also the nation where therapeutic and psychiatric ideas and solutions have taken firmest hold, and the attack on drugs and "substance abuse" must be seen in the context of the whole industry of addiction, treatment, and 12-point recovery programs. During the decade, this became a booming sector of the economy, with ever more positions for medical and nursing personnel, counselors, and of course administrators, all funded from the cornucopia of insurance payments. The more apparent problems, the more need for specialist physicians and counselors to treat the proliferating wave of syndromes and disorders—from alcoholics and drug abusers to survivors of child abuse and ritual abuse, multiple personality and obsessive-compulsive disorders, co-dependents and adult children of alcoholics. This all formed part of what an excellent recent book has entitled the "Dis-easing of America."

Naturally, members of the rehabilitation industry had a vested interest in stating the serious dangers of the problems they were purporting to handle, and they disseminated their views through the mass media as well as the specialist press. Inevitably, building up the problem implied the vast scale of the measures necessary to combat it, and in the context of the 1980's, that implied support for the "war" analogy. Individual therapists and researchers might be politically liberal, and advocate nonpenal medical solutions to drug abuse, but they provided the questionable statistics and the exaggerated claims used by the drug warriors to pass ever more stringent legislation.

In other words, the drug war has been so successful and enduring because it is the triumphant outcome of a broad bipartisan coalition, the alliance of disparate factions of whom all have something to gain in material or ideological terms. The war continues because it is invaluable for any group or individual with the *nous* to claim (however implausibly) that their particular cause or obsession is somehow connected to the drug platform. It continues because it offers careers and official positions, votes and research funding.

With so many vested interests, the drug war has become an addiction that seems impossible to break, despite all the evidence of the harm that is being wrought on countless individuals, and on society as a whole. As with any addiction, reform can only come when the victim recognizes that the condition is beyond his or her control, and decides to seek help. At that point, just possibly, we can begin the process that leads back, however slowly and painfully, to confronting the problems of the real world. If ever we needed a twelve-stage recovery program. . .

Semblance

by Paul Ramsey

The photograph, faded slightly,
Of her hungry, timid face
Calls forth his tenderness, his
Rage having somewhat subsided.
She looks shyly from the photograph
As though expecting damage
From any who would seek out frailty
To protect, trying to protect
Their own frailty and their fierceness
Of remorse.

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Turning Bad Into Good

by Graeme Newman

Anna Mycek-Wodecki

In 1983 I noted in *Just and Painful: A Case for the Corporal Punishment of Criminals* that there were approximately 315,000 individuals incarcerated in federal and state prisons, plus some 158,000 persons in jails of various kinds. The annual cost of this incarceration was estimated then to be $20,000 per inmate, amounting to an annual expenditure of some $10 billion.

The solution I advocated at that time was to replace much of the punishment of prison with corporal punishment of a specific type: one that applied acute pain (that is, intense sharp pain of very brief duration). I contrasted this type of punishment with those punishments that applied chronic pains, such as prison. Chronic punishments, I demonstrated, always bring with them uncontrollable side effects, especially "punishment overflow." Prison causes suffering of the individual that cannot be controlled in its severity since the pain endured often lasts well beyond the specified duration of the sentence. The suffering also spills over to the offender's family members who are deprived of the offender's earning power and presence in the family. This, I argued, is an immoral and unjust side effect of chronic punishments such as prison. It amounts to the punishing of innocent persons.

In order to implement a program of corporal punishment, I argued that the criminal justice system should be split in two: one system to deal with nonviolent offenders, and the other to deal with persistent and very violent offenders. The first group would be targeted for corporal punishment, the latter for prison. If this had been implemented, the prison population could have been reduced by at least 70 percent, since roughly less than one-third of inmates in prison at that time were violent offenders. This proportion varies from state to state and institution to institution, but this probably is still true today.

To drive home the radical novelty of this scheme, the type of corporal punishment I advocated was acute electric shock. There were important technical reasons for selecting this punishment: it is less observably violent (and less spectacular than, say, whipping), and it is in line with current technology, meaning it can be calibrated and controlled very easily. The amount of pain delivered to the offender can now be controlled to a degree never before possible. The chances of punishing to excess are therefore minimized (though all punishments do have unwanted side effects, some more than others).

Penologists reacted to this scheme with outrage, and the media did their best to make me look like some kind of weird creep, but the logic of the argument was never assailed. Liberal critics in particular were invariably forced to fall back on a defense of prison as a cure-all, a position in which they felt very uncomfortable, or they were forced to advocate more probation or community service, none of which look to the public like punishments at all. The conservatives were silent, except for Pat Buchanan, who complained that the punishments I advocated were not severe enough, amounting to a mere slap on the wrist. Of all the criticisms, Buchanan's was probably the only one that carried any weight. Let's face it: who wouldn't trade a year (or more given the long terms received by today's drug offenders) of prison for some minutes of intense physical pain? The liberal critics were so busy calling the plan sadistic and barbaric, that they overlooked just how humane the plan was.

Many of my colleagues asked me whether "I was serious" about what I had written. A number defended me (and I thank them) by suggesting that they thought I didn't really mean it, or that the book had been written "tongue in cheek." It seemed as if I had written something that was beyond belief. The ideas were unthinkable in the late 20th century; a kind of blasphemy.

The most common reason given for the outright rejection of corporal punishment of criminals is that it is out of step with modern sensibilities, that "we no longer do that sort of

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thing any more." This argument seems to imply that we are more "civilized" today in our punishments than were our ancestors. Yet it is easy to demolish. The death penalty (a favorite punishment of our ancestors) is again on the increase in this country. Some 70 percent of the people support it. The violent and crowded conditions in many prisons are difficult to hold up as standards of refined and civilized sensibilities. In fact the claim that our sensibilities are more refined appears absurd when we look at the enormous *excesses* today in the use of prison as a punishment.

But I am humbled by the fact that hardly anyone takes my solution to the punishment problem seriously, especially since things have become much worse since 1983. Today there are over 600,000 persons in prison plus some 405,000 in jails. The annual cost is somewhere in the vicinity of $40,000 per inmate, and to build a new cell costs approximately $100,000. Why has the situation become so much worse? Why has no credible alternative to prison arisen?

This disjunction between the demand for punishment and the acknowledgment of its nastier side is at the bottom of our problem. The public demands more punishment, but does not want to see its actual effects. Prison does a wonderful job of burying the seamier side of punishment and hiding it from the masses.

There are three main reasons why the numbers in our prisons have increased so drastically over the last decade. First, the draconian drug laws that were passed by many state legislatures mandated prison terms for possession of various amounts of drugs. The basic motive for this legislation was that popular ethic of governments: deterrence. The idea is that the more severe you make the punishments, the greater will be the reduction in crime. Unfortunately, there is scant research to back up this claim. It is a faith, and nothing more. Second, there is the failure to distinguish between truly serious offenders from other persistent but nonthreatening offenders. The predicate felon statutes of many states reflect this foolishness. The celebrated case of *Rummel* v. *Estelle* in which Rummel received a mandatory life term as a predicate felon, having been convicted of his third felony offense, is a good example. All three of his offenses were property crimes, the sum total of the property stolen amounting to $229.11. The U.S. Supreme Court did not find his sentence to be "cruel and unusual." Clearly, the definitions of "felon" and "felony" require radical revision, so that we end up incarcerating only those who are serious, violent offenders (hopefully before they have committed their second or third offense).

Third, the advocacy of the "just deserts" principle of sentencing in the 1970's resulted in the abolition of parole in many states and the subsequent legislation of mandatory prison terms implemented in the 1980's. The just deserts advocates of the 1970's argued that indeterminate sentences (i.e., sentences of incarceration that could be as long as necessary until the offender was rehabilitated) resulted in unequal punishments for the same crime, since some individuals "recovered" at different rates from others, thus getting shorter or longer punishments (sometimes by many years). The finger was also pointed at the supposed abuse of judicial discretion, and at the abuse of the discretion of parole boards (who get to second-guess the punishments by allowing the offender to be released from prison earlier, depending on his record). The deserts advocates (the now-celebrated Alan Dershowitz was among them) argued that, because rehabilitation had been shown not to work (which is generally true), there was no justification for applying different prison terms to different offenders for the same crimes. This seems straightforward enough. Unfortunately, while appearing morally correct, it ignored the practical outcomes of this "deserts model," which required mandatory sentencing (i.e., same punishment for same crime) and a strict grid of sentences and punishments. Further, it failed to address adequately what to do with repeat offenders (since in theory according to the deserts model, one matches the punishment only to the particular offense, and is not justified in repunishing for prior offenses that presumably have already been punished).

Worst of all, the just deserts advocates failed to address the real issue: the obsessive use of prison. Because they were locked into this type of punishment, the morally defensible (and in my view superior) ethic they espoused produced what they considered to be unanticipated outcomes, especially the compounding of prison terms by legislatures and the resulting massive increases in prison population. What they had failed to understand was that legislatures are strongly disposed towards a deterrence view of the world. They simply adopted the moral verbiage of the deserts advocates and used this for deterrent aims, thus compounding punishments to hitherto unheard of lengths, kidding themselves that this would reduce the crime rate. (The relationship between crime rates and prison rates, by the way, is especially difficult to determine. Research in the United States and in other countries generally suggests that crime rates and prison rates vary independently. Even if we grant to the deterrence advocates that crime rates have shown a slower increase in this country since the more drastic punishments were introduced in the early 80's, it is still reasonable to ask whether the small size of the decrease is worth the massive expenditure and human suffering caused by the system used to reduce crime.)

There have, of course, been alternatives to prison, but these attempts themselves demonstrate the very failure to understand the profound centrality of punishment to social life. The most well-known "alternative" was, of course, probation, introduced on a large scale in the United States early this century. It turned out to be largely an add-on "punishment" simply finding additional offenders. Worse, probation failed to convince the general public that it was in fact punitive enough. The great solution of the 1980's was supposed to be "community service," but unless its punitive element is sharpened, it will go the way of probation: people will see it, justifiably, as yet another attempt to subvert the punishment process. It turns "punishment" into "service" and "service" into "punishment" by taking away the intrinsic merit of service from those who would normally volunteer for it.

Yet the idea embedded in community service is morally attractive: it tries to draw out of the punishment process something "good"—service to the community. This is an important idea that, unfortunately in the way it is currently imple-

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mented, will go the way of other "alternatives" to punishment, because it does not address the fact that punishment must be punishment. The public, in my view, understands and demands this. Legislators understand this to a point, by enacting severe prison terms, but they ignore the fiscal implications of their legislation. These alternatives to prison have simply subverted the central idea of punishment: the intentional and deliberate infliction of pain and suffering on the offender.

This disjunction between the demand for punishment and the acknowledgment of its nastier side is at the bottom of our problem. The public demands more punishment, but does not want to see its actual effects. Prison does a wonderful job of burying the seamier side of punishment and hiding it from the masses. The offenders are locked away, and the prisons are built in isolated places. Likewise, legislators have been carried away with mandatory sentencing without any idea at all of what pain a year in prison actually brings to an offender. Indeed, the just deserts advocates of the 70's fed this delusion by assuming that, because prison could be measured in years and months, this made it a precise punishment. But the reverse is true: the actual pain physically and mentally suffered by inmates even in one day, varies enormously, and is never specified by the judge. (Judges who have tried to do this have been hounded out of office. One New York judge sentenced a sodomite to a particular prison, expressing his hope that the offender would get there a taste of his own medicine. The local newspaper was outraged.)

We have reached the point in the late 20th century at which society, one, is unable to accept the fact that punishment is the intentional infliction of pain and suffering on an offender for an offense; two, is either unwilling or unable to accept direct responsibility for inflicting punishment, either fiscally or morally; and three, has abstracted punishment to the point where the number of years pronounced in the prison sentence is supposed to take the place of punishment. That is, the judge pronounces the sentence of x years in prison, but has absolutely no say in what type of prison, what type of suffering inside the prison the offender will experience. Indeed, there is an influential school of penologists that believes offenders are sent to prison not *for* punishment but *as* punishment. They see the mission of penologists as mitigating the experience of prison. They try to reduce the pain and suffering, which takes from the sentence its punitive intent. It was for these reasons that I advocated the substitution of corporal punishment for prison for many nonviolent offenders. I hoped that it would help us to see the realities of punishment and begin to accept direct responsibility for the pain and suffering intentionally inflicted on offenders. In this way we might come close to the moral responsibility displayed by our forefathers whom we are disposed to judge harshly because of the violent punishments they inflicted. But at least they administered their punishments openly and directly for all the community to see. They were not ashamed to punish.

Why are we ashamed? I believe it is because of the redefined sensibilities we are supposed to have as part of living in a "civilized" society. We try to submerge into our unconscious the violence that we wish upon offenders. Intentionally inflicting pain and suffering is seen as emulating the behavior of the offenders we punish. But did not the criminal intentionally inflict pain or suffering on his victim? This is the conundrum of criminal punishment (and perhaps all punishment): in order to punish, we must actually indulge in some of the same behavior as the one whom we are punishing. The Judeo-Christian tradition understood this contradiction by trying to turn it to its advantage: it used pain and suffering as a method to teach the offender a lesson, to correct him. This technique is taken to its logical extreme in the great epic of Dante's *Divine Comedy*. In his scheme sinners are made to practice the virtue that is opposite their sin. Property offenders, for example, are condemned forever to change form, never having a form of their own, since they never in life recognized the boundaries of property owned by others. While Dante's punishments are intended for those relegated to hell and purgatory, there is much we can learn from his theory of punishment, for Dante invented ways to inflict pain that were at the same time imbued with good: the painful practice of virtue.

The problem, I believe, is to figure out a way to extract something good out of the "evil" that is inflicted on the offender. For it must be said that there is very little that is positive in our punishment system today. Though used by legislatures that believe punishment will reduce the crime rate, today there is no *morally positive* justification for punishing, beyond the entire negative ethic left to us by the just deserts advocates: the "offenders deserve it."

Our challenge, therefore, is to produce a punishment that carries with it the element of moral disapproval but that also turns punishment into a positive act. The 18th-century utilitarians thought they had the answer to this puzzle when they argued that only enough pain should be administered in order to outweigh the pleasures of the offense. But it soon became clear that this was just another version of the deterrence thesis. Governments since then have enshrouded this deterrent principle in the moral-sounding words of the "just deserts" argument, when all along their politically simple aim has been to reduce the crime rate. This might be defensible as a moral justification for punishment if it could be demonstrated that massive increases in punishment do in fact deter crime (which it cannot do).

Although my scheme for the reintroduction of corporal punishment was so soundly rejected, I have not given up on the idea on which the thesis was based: to acknowledge our responsibility for inflicting pain and suffering on those who have broken the law. I can see now that I began at the wrong end of the criminal justice system, although logically it was the appropriate place to begin, since that is where the majority of offenders are and certainly where the greatest fiscal savings might have been made. However, I recognize that to inflict pain openly on an offender is an extremely negative act, and certainly I made no attempt to argue that this process was morally more acceptable than the kind of behavior the offender himself may have performed. Rather, I based my argument for the moral superiority of corporal punishment by contrasting its merits to prison. By adopting this strategy, I won the battle against the prison, but I ignored the more difficult problem of how to apply pain and suffering while at the same time making it a positive act.

I propose, therefore, to turn to the other end of the criminal justice system, and ask what we might do to those few who have been condemned to death for the most hideous of crimes. Theirs is behavior that is not so difficult to pronounce as evil, and whose behavior we might try to avoid in our punishment. At the same time, though, in an effort to raise ourselves above the level of the murderer, we must try to extract something good out of the evil that we do to the murderer (such as

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the application of the death penalty) even though he may well deserve to suffer terribly for his crimes.

What "good" did the execution of the serial killer Ted Bundy do? We know that such penalties do not deter, so this was not the "good." Did it "satisfy" justice? But what kind of justice is it that feeds on the killing of individuals? Is it good to feel satisfied after killing someone, even though the person deserved it? I do not argue that the motives for killing are identical, but I do insist that there are psychological elements of both acts that are similar. The most obvious similarity is that both killings are intentional. I contend that there is no positive aspect in the infliction of pain or suffering on an individual, even when it is justified. We need to work hard, therefore, to turn this act of violence into something that *is* positive. The mere taking away of the murderer's life does not fulfill this need.

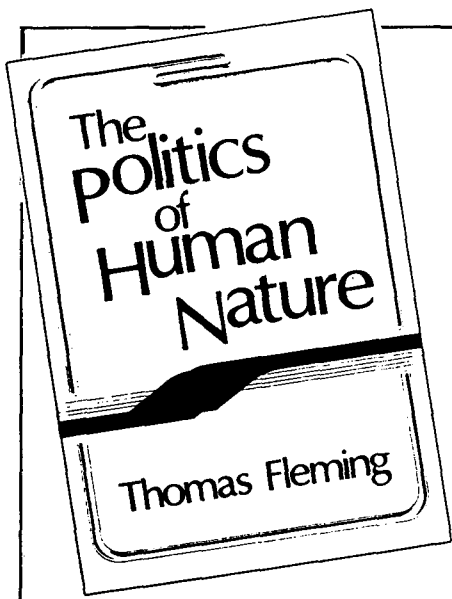
The answer lies in the very common complaint of murderers on death row. They announce that they are "sorry" for what they did (though it's often hard to believe them), but add, what can they do? Their victims are dead, they say, and they can't bring them back to life. True enough. But if we pause for a moment, we see the answer: while they cannot bring their victims back to life, they can save the life (and perhaps lives) of others. They could donate their body parts. In this way, one executed criminal's body could possibly save several lives. I would go so far as to say that the condemned murderer should be *made* to give up his body organs. The social and moral good could be enhanced tremendously by this practice.

There is a critical shortage of donor organs. As of 1987, for example, there were over 13,000 individuals waiting for organs of one kind or another, and the number is closer to 20,000 today. The U.S. government spent $300,000 in 1990 on Medicare assistance for each of the 60,000 Americans who require kidney dialysis. Thus, each executed murderer is "worth" at least $600,000 just for the two kidneys alone. In 1987 there were more than 12,000 individuals waiting for kidney transplants, and only some 2,500 donors. A liver transplant costs about $150,000. The need, therefore, is critical.

The fantastic service that executed murderers could provide by saving lives is tremendous. While their suffering may not make up for the specific suffering and loss of the particular victim, the victim's family and society as well can at least take comfort in the fact that two terrible deeds—the murder and the execution—have been turned at least to a truly positive outcome: saving lives and improving the quality of life of many others. This is true community service, while at the same time preserving the punitive element of the punishment.

There are, of course, many obvious objections to this idea. I anticipate, for example, complaints that the government will execute more murderers in order to obtain more body parts. This is indeed a cynical view of government. It should be possible to introduce legislative safeguards to fend off this pitfall, if it is a pitfall. There may also be some concern about an individual living with a serial murderer's heart or other body part. Patients receiving such organs would need to be counseled carefully. Whether it should even be known from whom the organs came is a question that would need to be addressed. Others might complain of a slippery slope, since some organs, such as kidneys, could be extracted from prisoners without killing them. Why not trade off years in prison for donating a kidney? And could an inmate "freely volunteer" parts of his body in order to get out of prison? For the moment, we should begin only with executed prisoners, and if this works, then look to its extension in other settings.

When I advocated corporal punishment for most offenders some nine years ago, I thought that the enormous cost of using prisons for punishment would sooner or later bring the system down. The massive increase in the use of prisons since that time has so far proven me wrong. The problem of punishment is not motivated or limited by fiscal concerns. Rather, it is a problem of moral psychology, as I have argued in this essay. We must try hard to solve this distinctly late-20th-century problem of punishment by beginning to acknowledge the deep-seated shame we have about punishing. We should not be ashamed to use punishment in order to save lives. In doing so, we may turn not only the bad of the offender into good, but also the bad of the punishment process itself into something good.



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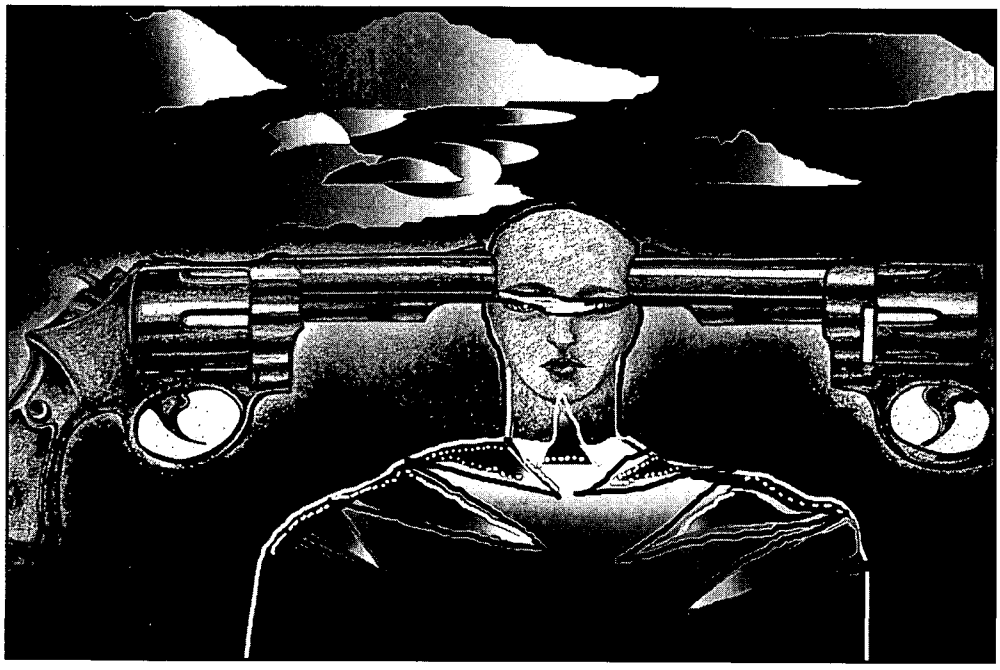
Vigilante Justice

A Case Study

by Theodore Pappas



Anna Mycek-Wodecki

When mild-mannered Bernhard Goetz shot four black youths who attempted to rob him in a New York subway in 1984, news reporters inevitably called him the "subway vigilante." But Goetz was not a vigilante; he was not a member of a vigilant group of concerned citizens patrolling the subways as keepers of the peace. On the contrary, he was a frightened individual whose actions were neither premeditated nor motivated by social concerns, and there is more to vigilance than just self-defense.

Hollywood is partly to blame for this misperception of vigilantism. For the mere mention of "vigilante" is enough to conjure images of the bloodthirsty and irrational lynch mobs of old Westerns or of the vengeful lone gunners in such "vigilante movies" as *Death Wish*. This skewed image is unfortunate not only because it bespeaks a profound ignorance of American history, but because it also obscures an important truth about our national character and culture: that wherever America still exists, there will be vigilantes.

Ken Rex McElroy spent the 1970's terrorizing the town of Skidmore, Missouri. He had been charged with 21 felonies, and all but once had escaped conviction. Robbing, raping, shooting, burning—this was how McElroy had defined community service. But the scared and silenced citizens of Skidmore reached their breaking point on July 10, 1981, when McElroy was shot to death in "broad daylight" on the main street of town. Forty-five townspeople witnessed the murder, and yet "no one saw a thing." Despite grand jury investigations and FBI probes, national news coverage and a book about the event, no indictments were ever issued and no trial was ever held.

This is a classic example of American vigilantism. When law and order have vanished from a community—when law enforcement becomes helpless and jails insufficient, when judges and juries become frightened pawns of malfeasance, when bribery, corruption, coercion, and extortion become accepted substitutes for due process of law—citizens have banded together, taken the law into their own hands, and enforced an ad hoc form of justice that restores the sanctity of life and property. In unstable areas of the 18th and 19th centuries—such as in frontier communities or in cities like San Francisco during the Gold Rush that were suffering the social strains of massive immigration—it was vigilantes who regulated law and order through community patrols not unlike the neighborhood watch groups popular today. These "regulators," as they were originally called, came from all walks of life, from all segments of the community, and were accorded respect as indispensable keepers of the peace. As legal historian Andrew Karmen has written, the vigilante credo of lawlessness on behalf of lawfulness was widely accepted as "a rational response to the inadequacies of the criminal justice system." More often than not, vigilante action was socially constructive and was sanctioned by the community.

The quintessential example of socially constructive vigilantism is now virtually forgotten, but it involved the largest vigilante movement in American history: the Northern Illinois Reg-

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Theodore Pappas is the associate editor of Chronicles. *An abbreviated version of this piece ran in the October 1990 issue of* Rockford Magazine.

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ulators of the 1840's. This was a perilous period in this region's history. Immigration into the Rock River Valley had flourished since the end of the Black Hawk War in 1832, and the pioneers and primitive frontier communities that blanketed the area were virtually defenseless against criminals. Even with these migrations, there were often no more than two or three individuals per square mile. Jails were few and far between, with the facility nearest to Rockford being for years in Galena, some sixty miles away. Rapid transportation and communications were as yet unknown, and the dense forests of the region provided great cover for criminals.

Horse thievery, robbery, counterfeiting, and even murder—none of these were uncommon occurrences for this time and place. "A strong and well-organized band of desperadoes held almost undisputed and unobstructed dominion throughout this region of the country," states a 19th-century history of northern Illinois. "Owners of fast or really good horses never presumed to leave them unguarded for a single night, unless the stable was doubly locked and barred, and a faithful dog either left within the stable or at the stable door; and often times the owners would sleep in the stable with their trusty rifles by their side, while no man ever thought of going to his stable or his wood pile after nightfall without his gun."

These bandits of the 1830's were exceptionally well-organized and waged a reign of terror that stretched from the Ohio River in the east to the Mississippi River in the west, and from southern Illinois and Indiana to northern Wisconsin and Michigan. They moved along well-defined trails and were assisted and given cover at scores of stations along the way. Passing and repassing stolen horses and counterfeit bills throughout the region, these way-station attendants were the 19th-century equivalent of modern-day front men who "launder" drug money and "fence" stolen goods. "Horse after horse was stolen and spirited away," reads one account, and "no one knew where or how; robbery after robbery occurred throughout the [area]; every once in a while a mangled corpse would be found in some uninhabited woods; counterfeit money flooded the [area], but no clue to the authors of these crimes could be obtained."

Nothing the communities did would stem the tide of crime. Arresting the malefactors was clearly not enough, for they seemed always able to pay any amount of bail, to escape while en route to court or jail, to pack juries and marshall perjured testimonies, or to arrange for innumerable changes in venue. A popular and revealing story of the times involved a Rockford sheriff who had just delivered a prisoner to the jail in Galena. Among the people gathered in Rockford to welcome home the sheriff? The prisoner himself.

Northern Illinois was not, however, unique in either its inadequate law enforcement or its loss of faith in the criminal justice system. A lawyer in Montgomery, Alabama, told Alexis de Tocqueville in 1832 that a man charged with murder is "always brought to trial, and always acquitted by the jury, unless there are greatly aggravating circumstances. . . . Each juror feels that he might, on leaving the court, find himself in the same position as the accused, and he acquits." The man then showed Tocqueville the perquisites that came along with being an attorney at this time. "Look at the scars that cover my head," he said. These "are knife blows I have been given." But then "you went to the law," said Tocqueville in anticipation. "My God! No," the man replied. "I tried to give as good in return."

The torching of the new courthouse in Oregon, Illinois, some thirty miles south of Rockford in Ogle County, is a prime example of what the Rock River communities were up against. According to Thomas Ford, an Ogle County judge who became governor of Illinois in 1842, the bandits "assembled in the night, and set the court-house on fire, in the hope that as the prisoners would have to be removed from the jail, they might in the hurry and confusion of the people in attending to the fire, make their escape. [The town's] newly-erected temple of justice. . . was entirely consumed, but none of the prisoners escaped." None escaped that evening, that is. For after their trial and conviction and sentence to jail, all of the prisoners successfully escaped.

This burning of the county courthouse, the community's "temple of justice," proved to be the final straw. On April 15, 1841, 15 representatives of Ogle County gathered to discuss what measures could be taken to regain control of their community. After calmly reviewing the inadequacy of the criminal justice system and the many crimes to which they and neighboring counties had been subjected, the citizens concluded that no option was left them but to take the law into their own hands. Regulator companies were organized across northern Illinois, with the Ogle County company directing their activities.

The regulators' methods were simple and direct: they visited en masse every known and suspected criminal, ordered each to be out of the county within a certain length of time, and summarily and severely whipped into submission all who refused to leave. Their first visit was to a horse thief named John Earle. Some one hundred regulators dragged him from his house, stripped him of his shirt, tied his hands behind his back, and then whipped him with a rawhide 36 times, six times each by six consecutive regulators. In proof that the vigilantes came from all walks of life, the regulator noted for having administered the most "vigorous" strokes was the deacon of an Ogle County church. Later that same day they visited a Baptist preacher who was widely known to be aiding horse thieves in Rockford. The regulators tied him to a tree and administered 96 lashes, during which the preacher confessed to his crime.

Not surprisingly, the resident outlaws did not take kindly to regulator activity. Within days of these whippings some eighty of them gathered to plan their method of retaliation. Not wanting a direct encounter with the regulators, they opted for what today would be called terrorism. They sent an anonymous letter to John Long, the Ogle County regulators' first captain. It threatened serious reprisals if he did not resign his position as captain, but Long refused. The bandits then burned down the mill where Long worked and, as an example of what they were prepared to do to him, broke the legs of his favorite horse. The bandits won; Long resigned. Nor was the next captain, C.W. Wellington, capable of sustaining such threats and tactics. He too resigned.

Wellington's successor, John Campbell, received his first death threat within two weeks of being elected captain. It came in a letter from John Driscoll, one of the most notorious outlaws of the Rock River Valley, and it too threatened serious reprisals if regulator actions did not cease. But being a man of "sterling character," Campbell refused to back down. Driscoll and his cohorts then decided that the captain "had to go," and on Sunday, June 27, 1841, Campbell was murdered by two of Driscoll's sons, David and Taylor.

News of the slaying spread quickly. One account says "the

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air was filled with threats of vengeance against [the Driscolls], and nothing but the lives of the murderous gang would pay the penalty. . . . Monday afternoon Rockford was more like a deserted village, than a bustling, busy little town. Every man that could go, went—all determined to avenge Campbell's death." John Driscoll was found at his son David's home and was arrested and jailed in nearby Oregon City. Two other Driscoll boys, William and Pierce, were arrested by Rockford regulators and held at John Campbell's home. David and Taylor Driscoll were sought but never found.

As soon it was sufficiently light on Monday morning, Campbell's friends and neighbors began searching for evidence that would help to identify his murderers, and they found it. Tracks around Campbell's barn led directly to David Driscoll's stable, and a trail of broken horseshoe prints matched perfectly with the broken shoe on one of his father's horses. The Ogle County sheriff then arrested John Driscoll "on suspicion of being an accessory to the murder of John Campbell." The next day a group of White Rock regulators raided the county jail and, despite the sheriff's protests, seized John Driscoll. They hurried him across the river to nearby Washington Grove, where they rendezvoused with the regulators holding Driscoll's sons.

Five hundred enraged citizens had gathered along Grove Creek in Washington Grove by the time the regulators and their prisoners finally arrived. Present were farmers, preachers, judges, lawyers, doctors, mayors, sheriffs, and shopkeepers from all across northern Illinois. And contrary to the prototypical Hollywood scene—of the ravenous mob that seizes the prisoner and attempts to lynch him from the nearest tree—the events that followed were slow and methodical; there would be nothing rash or frenzied about the largest "vigilante trial" in American history.

E. S. Leland, an attorney from Ottawa, Illinois, acted as judge of the proceedings. He ordered the 120 regulators present to form a circle near a large oak tree and sat the lawyers and witnesses alongside the accused —John and William Driscoll; Pierce had been released—in the center of the circle. James Marsh, an attorney from Rockford, represented the Driscolls, and a Rockford attorney named Charles Lattimer represented "the people." The defense was also given a chance to object to any of the members of the "jury"—the 120 regulators present—and Leland agreed to remove nine of them.

Judge Leland began by asking William Driscoll whether he had ever instructed his brother David, who had fled the state after the murder, to kill Captain Campbell. He said he had not. Numerous witnesses then testified against him, including an Ogle County citizen who claimed to have heard the accused not only give David Driscoll the order to murder Campbell but also instructions as to how to go about it. William then said, "I remember [giving the order to murder Campbell] but only did it in jest." The judge and jury—the 111 regulators—were not amused. "You will find that jesting away good men's lives is a serious matter, and that it will not be tolerated in this community," replied Judge Leland.

John Driscoll was similarly questioned and, by all accounts, given more than a fair chance to plead his case, but he offered none. Leland then put the question to the jury. "What say you gentlemen, guilty or not guilty?" "Guilty," came the regulators' unanimous response. As accomplices to the crime of murdering Captain Campbell, both men were sentenced to be hanged. Neither man protested the sentence, but both pleaded to be shot and not "hanged like dogs." The regulators voted and the change was allowed. The Driscolls were given an hour to prepare for death, during which two ministers in the crowd agreed to pray with the Driscolls and to listen to confessions. William confessed to having murdered at least five men, and prayed for forgiveness. John Driscoll refused all prayers and remained quietly defiant throughout the ordeal.

Then, just before the executions were to begin, a few members of the crowd began to question the legitimacy of the trial and to plea for the Driscolls to be turned over to proper law enforcement officials. Coming quickly to the vigilantes' defense, Lattimer made a moving, passionate address that reportedly "had the effect of stilling the clamors of those who were 'weak-kneed.'" "The people were justified in taking the course they had," he argued, because "their safety demanded it."

Five hundred spectators stood by as 111 regulators shouldered guns and filed into a single line. John Driscoll was made to kneel ten paces in front of half the assembled men, his son William the other half. Stout and strongly built, with heavy shaggy eyebrows and coarse gray hair, the 60-plus-year-old father remained still and silent as his eyes were blindfolded and his arms pinned behind him. A moment later every loaded gun but one successfully emptied its volley. Driscoll's head was shattered beyond recognition. The other half of the line then fired, and within seconds Driscoll's son also lay dead. Their uncovered bodies were buried side-by-side in a single, shallow grave.

The vigilantes' actions clearly represented the will of the Rock River community, but support was not unanimous. Among those who objected to regulator activity was Philander Knappen, editor of the recently founded *Rockford Star*. In an editorial dated two days after the executions, Knappen argued that the vigilantes' time would have been better spent in building stronger jails, and added: "If two or three hundred citizens are to assume the administration of lynch law in the face and eyes of the laws of the land, we shall soon have a fearful state of things, and where, we ask, will it end if mob law is to supersede the civil law? If it is tolerated, no man's life or property is safe."

The community was outraged. It believed it had been forced into drastic action because of drastic circumstances, that the local newspaper should not denounce what the community had clearly sanctioned, and that it was a vulgar insult to imply that the regulators had come into existence for plunder or profit and not for the reestablishment of the sanctity of life and property. A few nights after the controversial editorial appeared, the *Star*'s office was thoroughly ransacked. Type, copy, and ink were strewn across the room and "the entire office was reduced to a pile of ruins." The perpetrators of the crime were never identified. Devastated by the incident, Knappen sold the newspaper.

In September 1841 friends of the Driscolls arranged for the 111 regulators involved in the executions to be indicted in Ogle County on murder charges. The case was cumbersomely entitled: "The People v. Jonathan W. Jenkins, Seth H. King, George D. Johnson, Commodore P. Bridge. . ." Not surprisingly, after the regulators entered a plea of not guilty, most of the time spent in the disposition of the trial was consumed in calling the names of the defendants. But once the judge had reminded the jury that it would be impossible for all 111 men to be guilty of murder—because only half of the guns used in the executions were actually loaded, and no one knew which ones—events came to a swift close. Without even adjourning for consultation, the jury returned its verdict: "Not guilty." ◁▷

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The Leaning Tower of Babel

by Chilton Williamson, Jr.

"Culture, with us, ends in headache."
—R.W. Emerson

Culture Wars: The Struggle to Define America
by James Davison Hunter
New York: Basic Books;
416 pp., $25.00

The De-Valuing of America: The Fight for Our Culture and Our Children
by William J. Bennett
New York: Summit Books;
271 pp., $20.00

The Disuniting of America: Reflections on a Multicultural Society
by Arthur M. Schlesinger, Jr.
New York: W.W. Norton;
160 pp., $14.95

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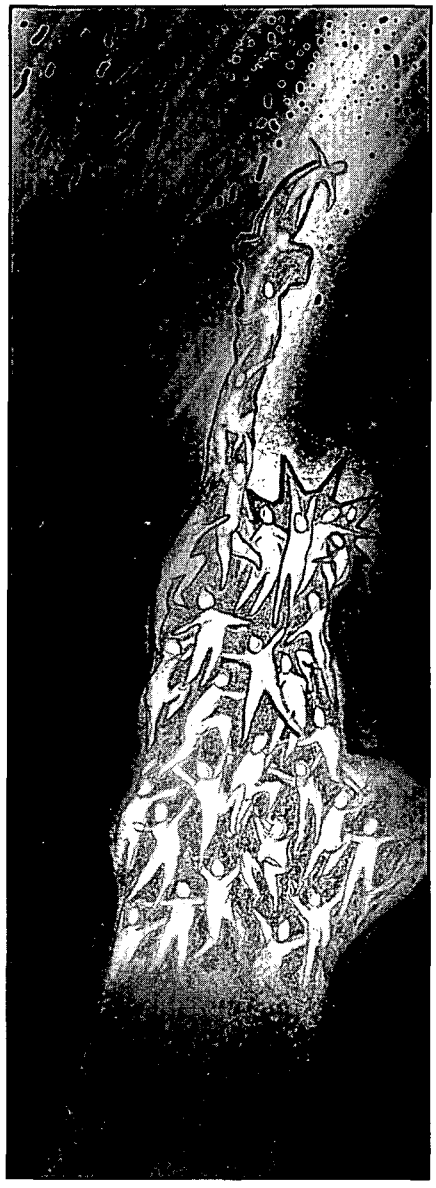

Anna Mycek-Wodecki

While the state of American—in fact of Western—society today is probably unique in human history, it is in some ways the inverse of the situation that prevailed at the end of the Roman Empire, when the barbarians had Roman citizenship extended to them without their ever becoming Romans, and the early Church was already an unignorable presence within the majoritarian pagan culture. The differences between that age and our own are that the neopaganism of contemporary times is a sinister corruption of the original, and that the empire was destroyed not by the subversive new religion of Christianity but rather by the age-old forces with which it had contended for centuries. Such of course may still be our civilization's end—we could be overrun by barbarian hordes as Europe is overrun in Jean Raspail's novel *The Camp of the Saints*, or devastated by incoming warheads from Kazakhstan (or both)—but it appears more likely that the agency of our ruin will be progressivism, a religion as wholly without precedent as Christianity. The barbarians and the missiles could follow later.

As was the Roman Empire, the United States is divided vertically by tribalism (what we call "ethnicity") and horizontally by belief, the modern antagonism between what James Davison Hunter calls "orthodoxy" and "progressivism" substituting for the ancient enmity between paganism and Christianity. In the case of the Roman Empire, however, the religious division was heavily overbalanced on the majoritarian side, while in that of America the contest is much more equal in influence, if not in numbers. In the 1950's, C.P. Snow advanced the thesis of "two cultures," a widely accepted but finally implausible theory holding that Western thought had split itself into two hermetically sealed worlds, the scientific and the humanistic. In *Culture Wars: The Struggle to Define America*, Professor Hunter argues that the United States has developed a cultural bipolarity in which the opposed magnetic forces emanate not from science on the one side and humanism on the other, but from contradictory bases of moral understanding that cut at an angle of 90 degrees across all previously established lines of agreement; so that a "progressive" Catholic today has more in common with a "progressive" Lutheran or agnostic than he has with an "orthodox" member of his own church, an "orthodox" Jew more sympathy with an "orthodox" Catholic than with his Liberal or Reformed brethren.

According to Mr. Hunter's interpretation, the countervailing parties to the contemporary cultural debate are broadly identifiable as acolytes of one or the other of two "world views," or as manifesting "impulses" toward such. "Orthodoxy," Hunter defines as "*the commitment on the part of adherents to an external, definable, and transcendent authority*"; "progressivism," as "the tendency *to resymbolize historic faiths according to the prevailing assumptions of contemporary life.*" Between the orthodox and progressive parties, which have a reality superior to that of the Republican and Democratic parties, war is being waged to

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define—or to redefine—the nature and purpose of American civilization. The weapons deployed in this war include the media, direct-mail solicitation, and political campaigns whose substance is more symbolic than programmatical; yet because both sides defend radically opposed ground and argue on separate rhetorical planes, each finds itself speaking past the other. Between them, debate is finally impossible. Hopeless of making converts among their opponents, they concentrate instead on delegitimizing the enemy—on convincing the broader and more neutral public that he is "un-American." Although Hunter concedes that the debate is polarized to a far greater extent than is the country itself, he does not hesitate to suggest that, "our national identity and purpose has [sic] not been more a source of contention since the Civil War."

William Bennett agrees with Hunter that, "America . . . is engaged in an ongoing and intensifying cultural war," which he describes as "the struggle over the principles, sentiments, ideas, and political attitudes that define the permissible and the impermissible, the acceptable and the unacceptable, the preferred and the disdained, in speech, expression, attitude, conduct, and politics." But (perhaps because he is getting ready to run for something) his understanding of the "war" is far more shallow and partisan than Mr. Hunter's; he seems to believe that the issue is, after all, just another clash between the "conservative" Republicans and the "liberal" Democrats. "Why is there a battle about our culture?" he asks. "Part of the answer lies in understanding that there is a fundamental difference between many of the most important beliefs of most Americans and the beliefs of a liberal elite that today dominates many of our institutions and who therefore exert influence on American life and culture."

If only it were as simple as that. Mr. Hunter, while no great shakes as a writer (*Culture Wars* is padded, pedantic, and pompous), is at least a scholar of sorts; Dr. Bennett, by contrast, is a lifer escaped from the license-plate-manufacturing division of Penitentiary State University. A trained scholar who has failed to produce a work of scholarship beyond the dissertation, he has made his way outward from the campus exercise yard by accepting work in the hardly less insular world of the federal government in Washington, D.C., where his proven strategy has been to accept futile but highly prominent jobs (chairman of the National Endowment for the Humanities; Secretary of Education; Drug Czar), declare expansive and ambitious goals, make provocative speeches (in contemporary American politics, a "provocative" statement is something on the level of, "Money can't buy a great education") that solicit the attention of the media, declare all missions in process of accomplishment, all battles tending toward victory—and resign. Describing his tenure as a Cabinet secretary, he writes, "I wanted to do with higher education what I tried to do with elementary and secondary education: engage in some truth telling, set the stage for a full-scale effort at much needed reform, force Congress to go on record, and keep the pressure on. . . . Given the political climate of the times, I couldn't hope to enact all the reforms I wanted. But I could help create a climate of change and lay the groundwork for future reform." Clearly, Dr. Bennett has succeeded better than anyone since Thornton Wilder in making the part of the Stage Manager a stellar role.

The De-Valuing of America (*Bennett contra Mundum* would have been a better title) is a smug, self-serving, platitudinous, tedious, and ill-written book by a working politician and self-described conservative who believes that "Dr." Mar-

BRIEF MENTIONS

WATCHING AMERICA: WHAT TELEVISION TELLS US ABOUT OUR LIVES
by S. Robert Lichter, Linda S. Lichter, and Stanley Rothman
New York: Prentice Hall Press; 322 pp., $24.95

Watching America analyzes the social and political content of thirty years of prime-time television and traces programming from depicting traditional morality, to criticizing this status quo, to finally endorsing alternative values. Dramas in the 50's and 60's, for instance, did not show "actual infidelity" onscreen "since, as with premarital sex, rumor and innuendo sufficed to destroy reputations." By the 80's, however, such transgressions "elicit[ed] neither shock nor condemnation." Morality suffered an inversion whereby "the rigid traditionalist who would deny [sex] its natural physical expression has become something of a stock villain." Even homosexuality, once taboo, now enjoys an air of respectability. Television's new morality "criticizes censorship, homophobia, and puritanism, while treating the victims of these evils in a generally sympathetic light."

Before the mid-60's, *I Love Lucy* and *Father Knows Best* conveyed the apolitical atmosphere in which "traditional values and roles were assumed to be the norm without argument." The changes that ensued reflected what the authors call "left populism," a social philosophy that "scorned moral restrictions and endorsed . . . sexual experimentation, feminism, and . . . strong government action to make . . . society more egalitarian and pluralistic." These changes were embodied in the Norman Lear productions of the 70's that did so much to shape the new status quo. "Lucy Ricardo, Harriet Nelson, and Margaret Anderson would have been shocked to see their Lear counterparts Ann Romano, Maude Findlay, and Mary Hartman." Indeed, it is difficult to imagine Donna Stone or Lucy Ricardo even considering an abortion, but for Maude, it seemed inevitable.

The new status quo, however, has its limits, and writer-producers who routinely dredge up abortion, rape, incest, sexual abuse, and illegal drugs have been willing to take social realism only so far. The perpetrators of violent crime are portrayed as "mainly white, mature adults, especially businessmen" when in fact FBI statistics document that "crimes are committed disproportionately by blacks, youths, and low income groups." Clearly, there is "no impetus to carry 'realism' in this direction."

Though the Lichters and Rothman are confident that "television has endorsed the changes and may have accelerated their acceptance," the limited scope of this book prevents them from getting at the central issue: responsibility ultimately resides with the viewing audience which, if the popularity of shows like *Married With Children* and *Studs* is any indication, has shown little or no resistance to the debased mores of the new status quo.

—*Emily Adams*

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tin Luther King, Jr. was a great man and that anybody to the right of himself (for instance Pat Buchanan) is un-American and probably a dangerous demagogue to boot. Although he perceives initially that, "a culture war . . . is a war to the death," he is too much the official spokesman and intellectual trimmer to resist contradicting himself by foreseeing a happy conclusion to it: "Values that were once in exile," he booms, "are being welcomed home. The American people are renewing their commitment to our common principles. And so the task of cultural reconstruction has begun." Thanks be to God that William Bennett—and not M.E. Bradford—won confirmation as chairman of the NEH! The job was divinely created for him, and for those like him.

Bennett's pragmatic optimism (which is that of the professional vote-getter) overlaps partly the ideological optimism (which is that of the professional liberal) of Arthur M. Schlesinger, Jr. on the subject of those vertical divisions in American society that used to be welcomed as "pluralism" but are increasingly viewed askance as "multiculturalism." "There are those today still," Bennett observes darkly, "who claim we are now too diverse a nation, that we consist of too many competing convictions and interests to instill common values. They are wrong." Professor Schlesinger, though of course he expects that all will eventually be for the best in the United States of America as it has been since the North won the Civil War, does not sound quite so confident.

Arthur Schlesinger's great concern is for what he calls, after Gunnar Myrdal, "the American Creed," defined by the Swedish writer as "the *most explicitly expressed* system of general ideals" of any Western country. Schlesinger endorses Crèvecoeur's vision during the American Revolution of "a new race of men" gathered from all the nations to act upon a newly created principle—a principle he believes is threatened by the "cult of ethnicity," which denies that this new race is either possible or desirable, assails the idea of "a common American identity," and emphasizes the rights of groups above the rights of individuals in a way that is not congruent with the expressed meaning of the Constitution.

The weakness of Schlesinger's argument lies in his romantic understanding of American history, which he views as the progressive vindication of a latitudinarian conception of the motto *E pluribus unum*. For Professor Schlesinger, the story of America (once the paradox of slavery was resolved) is a glorious pageant of ethnic and cultural assimilation accompanied by an expanding tolerance, in course of which the ideal of a new race has been substantially realized. Unfortunately, this story incorporates as much myth as it does reality, as James Lincoln Collier has shown in his recent book, *The Rise of Selfishness in America*, where he describes the socially destructive impact of non-Anglo-Saxon and non-Nordic immigration to the United States. Schlesinger's is the classic liberal fallacy: the notion that political principles define, create, and shape a society, and not the reverse. *E pluribus unum* was an idea pregnant with danger from the beginning, but that danger required a century to make itself apparent; long before the advent of multiculturalism, it had outstripped the pluralist ideal. The profound truth is that the matrix of American individualism has historically been Christianity, not Enlightenment philosophy; that it was Christianity, not democratism, that inspired American idealism and flogged the American conscience to surpass itself. Although Schlesinger observes that, "The crimes of the West have produced their own antidote," he fails to identify the Christian religion as that antidote. In fact, in the course of 138 pages of text defending the Western intellectual heritage, he does not mention Christianity at all. ("The American mind," he has written elsewhere, "is by nature and tradition skeptical, irreverent, pluralistic and relativistic.")

If the United States really is rapidly becoming a house divided against itself—a gigantic college dormitory carefully and precisely segregated according to race and creed—is it possible to have any hope at all? For Professor Schlesinger there remains the ideal of the new race—"still the best hope." For Dr. Bennett, there is the prospect of a well-paid new bully-pulpit—the Surgeon Generalship, say, which Dr. Koop exploited so effectively as Condom Czar—if President Bush is reelected next fall. For Professor Hunter, there is the probability that the culture war will not—at least in the foreseeable future—escalate into a fighting war, in which the mighty pen is abandoned for the trusty sword.

Although Hunter claims to find the orthodox and the progressive camps fairly evenly matched, he also seems to believe that time and history favor the progressive cause. Citing the work of Gramsci, he observes that the orthodox position is peculiarly vulnerable to co-optation—a process that is already well advanced in this country, and of which Dr. Bennett himself is the personification. To this should be added the argument (Hunter himself does not make it) that while traditional society is less and less adapted to the structure and purpose of the modern state, progressive society is perfectly designed for it. Thus, in order for the progressive armies of the cultural wars to triumph, they may have only to sit back and let the state pave the way for them.

LIBERAL ARTS

ANDREA DWORKIN'S DREAM

"But in what way has this [ant] society evolved beyond that of humans? It is far ahead in women's liberation. Male ants are totally unimportant. When their biological usefulness is over, they are discarded and not permitted to return to the nest. The entire ant social world is female, including the soldiers, the workers, the farmers, and, of course, the queen. Male ants have wings, and they are expected to use them—to get out."

—*from* Getting the Facts, *a sixth-grade textbook*

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The Prophetic Voice of Donald Davidson

by M.E. Bradford

"Canst thou draw out leviathan with a hook?"
—Job 41:1

Regionalism and Nationalism in the United States: The Attack on Leviathan
by Donald Davidson
Introduction by Russell Kirk
New Brunswick, New Jersey
Transaction Books;
368 pp., $19.95

Anna Mycek-Wodecki

No idea is more central to the American political tradition than that of limited government. As a nation we began with our commitment to the liberty of commonwealths, of communities, and of citizens. When we collectively rejected the remote, arbitrary, and potentially hostile power that, in its "benevolence," claimed a right to govern us "in all cases whatsoever," we chose the advantages of local and provincial self-government over those of anything more than a minimum of collective security. And, in the process, we rejected the notion of a self-admiring, ambitious, general (or national) authority, able to supervise, for "our own good," both our public and private lives. Yet, say the friends of government, such an engine may be instrumental in realizing seemingly worthwhile objectives—goals not to be achieved in a large and various Republic without submission to some absolute authority. Thus the impulse to create such an engine has among Americans always represented a species of "noble temptation," appearing usually in the subset of our inherited politics connected with the Puritan/Federalist/Republican minority of our public men: of those willing to set the liberty of citizens aside if there are "lofty reasons" for the sacrifice. Even though in 1776, and then again in 1787-1788, we rejected such meliorist concentrations of power and resources as potentially tyrannical, what we had learned in the Revolution, we (following this minority) swiftly forgot in hearing too much about making the nation "*all* one thing or *all* the other." And then, in the subsequent stages of statism following the 1865 triumph of Union, we left that lesson further and further behind, until international adventurism, industrialism, and collective vainglory brought us finally, in 1933, to the instrumental state.

Interrupting this dismal record of a heritage slowly (and by regular stages) betrayed, when the declension had reached its nadir, the Nashville Agrarians appeared. The witness in behalf of the traditional regional regime rendered by these 12 Southerners commenced in 1930 with their manifesto, *I'll Take My Stand*, and, for all intents and purposes, had its summary and concluding statement in Donald Davidson's *The Attack on Leviathan: Regionalism and Nationalism in the United States*, first published by the University of North Carolina Press in 1938. Richard Weaver rightly described this book as "the clearest and most courageous of the Agrarian documents." However, there could scarcely have been a more inauspicious moment for recommending resistance to centralizing power than the middle of Franklin D. Roosevelt's second term as President. Yet, even though his publisher abused the book, the man met the moment. For there was never a political thinker more indifferent to what notions were, in his day, fashionable in New York, Boston, and the colleges of the Ivy League than Professor Donald Davidson of Vanderbilt University: no student of American cultural history so absolutely unaffected by the anomaly of his situation as one of the few conservative voices to be heard in his country. Dr. Russell Kirk of Michigan, the Sage of Mecosta who is a perfect Northern counterpart of this most resolute Southern Agrarian, has written a splendid introduction to this reissue of his old friend's book—in this edition with the parts of its title reversed for the sake of clarity. Kirk speaks of Davidson as the "stalwart defender of America's permanent things during an era of radical change," which is true both of the general impact of *Regionalism and Nationalism in the United States* and of the book's specific components.

No writer is more Southern than Donald Davidson. Yet what he teaches in this book is a truth for all the sections of our country. "There are," he writes, "unreconstructed Yankees, too, and other unreconstructed Americans of all imaginable sorts, everywhere engaged in preserving their local originality and independence." One of the best of these essays comes directly out of his almost forty summers at Bread Loaf in Vermont, where he taught frequently in the Bread Loaf School of English. "Still Rebels, Still

M.E. Bradford is writing the authorized biography, Down This Long Street: The Life and Times of Donald Davidson.

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Yankees" is an affectionate evocation of the original basis of American variety, the difference between the South and New England that goes back to the beginning, and of the need for preserving it. In Vermont the quintessential Southerner found relief from the pressure that surrounded him in Tennessee and from summers in the South. Place, belief, weather, and history account for the difference between Brother Jonathan of Vermont and Cousin Roderick of Georgia. Each man represents a distinctive version of American strength of character. Davidson renders each archetype in terms of the particulars of his way of living. He drew one portrait from a relative of his sometime colleague, Professor John Donald Wade of Marshallville, Georgia; the other, Brother Jonathan, is simply Robert Frost's old neighbor, Homer Noble, in whose home the Davidsons were frequent guests. These regional Americans "are attacking Leviathan" by being themselves, by living out of what is distinctive and indigenous in their particular heritage, without wishing to change their countrymen in another place from living another way.

The integrity of regional American cultures and what we must do to preserve them is the great theme of *Regionalism and Nationalism in the United States*. Davidson sees regional culture as natural—as something in contrast with the states and the federal government, which are the handiwork of conscious design. Two-thirds of this volume is made up of essays treating the political economy of regionalism, the resistance of social science to regional explanations, regionalism in the arts, and the great diversity of the American scene. Other chapters discuss the regional character of American heroes, educational regionalism, the regionalism of American literature, and the malevolent response of New York to the nation's cultural variety. One that I like well contrasts the explanations of American character provided by Frederick Jackson Turner and Arthur Meier Schlesinger: the first a Western regionalist, devoted to understanding American particularity, and the other an Eastern centralizer, interested in telling his reader how we have moved toward life in a statist society not yet in being: a norm imagined. Another essay almost as good, "The Two Old Wests," gives balanced expositions to the versions of America that developed north and south of the Ohio River and west of the Appalachians after the achievement of American independence in 1783. Lubbock and Amarillo, Fargo and Omaha are the western edges of this vast domain. Here men remember frontier, not Europe. But they remember it in two distinctive ways. Davidson's analysis of the difference between the Old Northwest and Old Southwest is masterfully done: on the one hand, "intensity of conviction, frankness of love or hate . . . unwillingness to submit one's integrity to abstract dictation or to taint it with even the shadow of disloyalty to what one holds dear," even to the point of death; on the other, "much more optimism than fatalism" and a refusal "to believe that obstacles cannot be overcome" or that measurable purposes cannot be achieved "by an effort of the will."

One other large section of the book deals specifically with problems peculiarly Southern. Despite the sixty years and more since its contents were written, it has remained undated. As Davidson maintained in 1937, it is still true that Southern liberals do not get what they expect out of their "victories," that moderate Southern social thinkers are still used politically by those in power but are not then called to serve in government, that Southern interests are habitually misrepresented by the region's spokesmen and leaders, and that Southern poets are well-advised to go their own way, without seeking the approval of the literary dictators of the Northeast. Indeed, the proportion of Davidson's counterattack that seems as timely in 1992 as in 1938 is astonishing—and a melancholy reflection of the misfortune of his homeland (and mine) during the intervening years.

These comments on things Southern, and several other components of the book, carry with them a prophetic air, a sense of ominous foreboding. One instance of this wise anticipation occurs when Davidson writes in a concluding essay of H.G. Wells' *The Shape of Things to Come* and the contrasting sentiments of "Æ" (George William Russell), who disliked the idea of a world state as much as Wells admired it. Davidson in 1932 realizes that the mad scheme of world government (despite the failure of the League of Nations) is on the march: it is a further extension of the uniformitarian principle that he opposes within the United States. As with the idea of a "Great Society organized under a single, complex but strong and highly centralized national government," once its effects are recognized for what they are, he expects to see the nation and the world filled with an angry reaction to such empty promises. Then, knowing once again that "true Federalism consists in the right relation of region (or section) and nation," these restored Americans will be ready to shout down "the subtlest and most dangerous foe of humanity, the tyranny that wears the mask of humanitarianism."

Russell Kirk has done a genuine and lasting favor for all who are, as Davidson predicted, now prepared to learn from what is happening in Eastern Europe and elsewhere, who realize how they must take sides with the breakup of polyglot empires and artificial combinations. For Davidson's meditation *qua* polemic on regional integrity and devotion to "our own folks" is a fierce old book, one which gives a rightful place to both "federation" and "autonomy" but is uncompromising in its tenor—loving, sometimes angry, and always incisive—like my mentor himself, the man who made it. For those who knew him (and especially those who were his students) found in Donald Davidson a moral force unlike anything we had discovered in other men, and an illustration of that primary and indispensable loyalty to one's own, to those for whose sake we must attack and destroy Leviathan. ©

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Why We Need A Smaller U.S. Population And How We Can Achieve It

We need a smaller population in order to halt the destruction of our environment, and to create an economy that will be **sustainable** over the very long term.

We are trying to address our steadily worsening environmental problems without coming to grips with their root cause – overpopulation.

If present immigration and fertility rates continue, our population, now over 254 million, will pass 400 million by the year 2050 -- and still be growing rapidly!

All efforts to save our environment will ultimately be futile unless we not only halt U.S. population growth, but reverse it, so that our population can eventually be stabilized at a **sustainable** level – far lower than it is today.

The Optimum U.S. Population Size

The central issue is surely this: **At what size should we seek to stabilize U.S. population?** Unless we know in what direction we should be headed, how can we possibly devise sensible policies to get us there?

The size at which our population is eventually stabilized is supremely important because of the effect of sheer numbers on such vitally important national goals as a healthy environment, and a sustainable economy.

We believe these goals can best be achieved with a U.S. population in the range of 125 to 150 million, or about its size in the 1940s. This optimum size could be reached in about three to four generations if we do two things now that are well within our grasp.

How To Get There

1. **Reduce annual immigration to about 200,000** so that it is in rough balance with emigration (out-migration). Then, immigration will no longer contribute significantly to our population growth, as it does now.

2. **Lower our fertility rate** (the average number of children per woman) from the present 2.1 to around 1.5 and maintain it at that level for several decades. We believe that non-coercive financial incentives will be necessary in order to reach that goal.

If almost all women had no more than two children, our fertility rate would drop to around 1.5, because many women remain childless by choice, or choose to have not more than one child. **We promote the ideal of the two-child maximum family as the social norm, because that is the key to lowering our fertility.**

NPG Proposes These Incentives to Motivate Parents to Have Not More Than Two Children

- Eliminate the present Federal income tax exemption for dependent children born after a specified date.
- Give a Federal income tax credit **only** to those parents who have not more than two children. Those with three or more would lose the credit entirely.
- Give a refundable tax credit (cash payment) to low income parents who are eligible for the tax credit, to the extent that the credit exceeds their tax liability.
- Give a cash bonus for voluntary sterilization to both men and women under age 35, who have already had at least one child.

Two Vastly Different Paths Lie Before Us

With the reductions in immigration and fertility we advocate, our nation could start **now** on the path toward a sustainable population of 125 to 150 million.

Without such a program, we are almost certain to continue our mindless, headlong rush toward catastrophic population levels.

If you agree that we need to work toward a smaller U.S. population, we need your support. **NPG is the only organization that calls for a smaller U.S. and world population, and for specific, realistic measures to achieve those goals.**

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Playing Possum

by Arnold Beichman

The Coming Order: Reflections on Sovietology and the Media
by Andrei Navrozov
London: The Claridge Press;
59 pp., £3.99

◆

Mr. Navrozov is a serious man and his political concerns, no matter how improbable they may appear, must be taken seriously. He believes, first, what has been happening in the Soviet Union since March 1985, namely its visible decomposition, is a KGB disinformation achievement, that the "collapse of communism" (he puts the phrase in quotation marks) is what he calls a "mass fiction," that *perestroika* is a "Trojan horse" and that Eastern Europe "has not been set free." We are in a new era, the era of what he calls "superdetente." Second, he believes the KGB has fooled the press media and leading scholars of Soviet politics like Robert Conquest and Walter Laqueur, academic Sovietologists, and publicists—like Barbara Amiel—into thinking that communism has been overthrown in the ex-U.S.S.R.

Playing on the opening words of *The Communist Manifesto*, he writes: "A spectre is haunting Europe. It is the spectre of anti-communism." By which he means not what we think it means, but rather that the seeming anticommunism in the ex-U.S.S.R. is really a KGB-created fraud. Mr. Navrozov says it "can be proven that Andropov was the greatest 'anti-communist' since Stalin who was the greatest 'anti-communist' of them all if only by virtue of his clear understanding of ideology's function in a brave new world that awards its criminals no prizes unless whole nations are their victims." I looked in vain for proof of these statements in Mr. Navrozov's pages. I see no possibility of empirical verification of his speculations or opinions disguised as fact. A confession or a defection by a KGB disinformation conspirator might be evidence, but how would we know if the confession were genuine? All Cretans are liars, said the Cretan.

And when Mr. Navrozov does undertake to talk about matters that can be subjected to empirical analysis, I find his conclusions unacceptable. Mr. Navrozov says "Russia is years ahead of the West in military applications of its space technology." How can this be? The Soviets simply do not have modern computer, radar, or sensor technology for advanced surveillance. In the past, the Soviets launched lots of satellites, but they only lasted a few months before they became space junk. The Russians have been unable to make a viable space shuttle, which in itself shows a certain technical retardation. They can put people into space for long periods of time, but such achievements are of little military significance.

Mr. Navrozov concedes that "the role of the Communist Party in Russia, and even more plainly in Eastern Europe, has been *genuinely* curtailed." But he then asks, "Does this mean, however, that the fulfillment of the totalitarian strategy continues no longer, or that the strategy is any less global?" Let us agree that fulfillment of the global totalitarian strategy is still a priority; so what? If the role of the Communist Party has been genuinely curtailed, then the fact that there are some conspiratorial remnants of the old regime still around—and there are as I will show—is not necessarily a cause for panic. All societies have such scum about. As Norman Cohn wrote in *Warrant for Genocide*: "[T]here exists a subterranean world, where pathological fantasies disguised as ideas are churned out by crooks and half-educated fanatics. There are times when that underworld emerges from the depths and suddenly fascinates, captures and dominates multitudes of usually sane and responsible people. And it occasionally happens that this subterranean world becomes a political power and changes the course of history."

Yegor Ligachev, an early victim of *perestroika*, wants a return to communism and a global triumph for his Utopia. He has said so openly, but is the success of such a project at all likely? Is it possible that Ligachev or the *Pamyat* crowd are going to fascinate, capture, and dominate the Russian, Ukrainian, or Byelorussian people as Hitler once did the German people or Mussolini the Italians? Hardly. But Mr. Ligachev isn't the only true believer around. With delight, Roy Medvedev told the official U.S. communist weekly last fall: "In most of the country, Communists are still in power, because there is no other structure. About two-thirds of the country is still run by the Communists. They are not advertising it, but the old structure still basically continues."

Mr. Navrozov is concerned, as we all must be, whether the new Commonwealth of Independent States can be trusted, whether its leaders, all former Communists, have really surrendered their Marxism-Leninism and are today believing and practicing democrats. The history of the last 74 years, it can be argued and as I have written, gives the West little reason for trusting what was the Soviet Union. But today there *is* no Soviet Union; in fact, there hasn't been a Soviet Union since the August 19 *putsch*, which obviously backfired, regardless whether it actually was a ploy by Gorbachev. Mr. Gorbachev is out and Mr. Yeltsin is in, or was that what was always intended by the KGB disinformationists? I don't ask this question scornfully. There are informed people in Russia who believe that Mr. Gorbachev plotted the coup

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against himself with consequences unforeseen by the conspirators. Vladimir Bukovsky has written: "Many in Moscow believe that Gorbachev was much more actively involved in the so-called coup, if not the mastermind behind it. As quite a few cynics would point out, he had very good reasons to want his immediate subordinates to stage a 'coup.'" Talk about another coup is still heard in Moscow.

Russian television now routinely runs documentaries about the execution of the Romanovs, Stalin's bloody collectivization program, the purge trials. According to David Remnick, Russian journals and newspapers detail historical damage reports and how many people were shot and imprisoned; how many churches, mosques, and synagogues were destroyed. Can this really be a KGB disinformation campaign? When Mr. Navrozov writes that "*all* information originating within a totalitarian state is deception," the question then arises: is there a Soviet state, and if Mr. Navrozov says yes, then what is there about it today that is totalitarian? Or is its seeming pluralism a deception? Yet doubts that all is on the up-and-up with the new republics cannot easily be suppressed. We shall have to wait and see. During World War II, there was a great elation in the West when Stalin announced the dissolution of the Comintern. Yet he managed quite well from 1945 on without the Comintern to pursue communist expansion westward.

Mr. Navrozov is on surer ground when he criticizes "Sovietology." This subdiscipline in the social sciences was the postwar creation of two hardheaded American academics—Philip Moseley of Columbia and Merle Fainsod of Harvard—and Leonard Schapiro of the London School of Economics. The researches and writings of these three men inspired future Sovietologists like Robert Conquest, Walter Laqueur, and others. They were the best and the brightest in their field, and it is precisely these academics whom Mr. Navrozov singles out for derision. If Mr. Navrozov is correct that Messrs. Conquest and Laqueur have been taken in by a KGB conspiracy, what can account for the fact that these tough-minded historians who were not taken in during the Stalinist and post-Stalinist decades seem now to have lost their heads in the *Gorbachevshchina*? Have men like Jean-François Revel, Vladimir Bukovsky, Richard Pipes, and Adam Ulam also been taken in by the KGB? But there are Sovietologists and Sovietologists. Men like Jerry Hough, Stephen Cohen, Moshe Lewin, Arch Getty, and Marshall Shulman, among others (as well as, lest we forget, the CIA analysts who woefully underestimated Soviet arms expenditures) represent one of the great intellectual failures of the century. It is my hope that someday a study will be made of the tendentious research findings and monographic literature of this pro-Soviet school of Sovietology. But to sneer that the current crop of "Sovietologists expect the new Stalin to smoke a pipe and sport a mustache" is downright silly.

Mr. Navrozov fails in one important regard, a failure that makes his pamphlet valueless. He neglects to supply us with any criteria for judging what events in Russia would confirm or disprove his thesis. In other words, what would have to happen in Russia to compel Mr. Navrozov to say, "I've been wrong; Conquest is right"? If everything—including German unification, the opening up of secret archives, the decomposition of the Soviet Union; indeed, all that has happened since March 12, 1985, when Mr. Gorbachev came to office—is part of a KGB conspiracy, what would be needed to persuade Mr. Navrozov to rethink his conclusions? Or is everything that happens in the ex-U.S.S.R. proof of the KGB conspiracy? In any case, opinions are not data. Metaphysics is not empirical proof. John Bunzel has put it neatly: "[A]ny proposition that is not capable of being refuted is not scientifically acceptable."

Let me end on a personal note. I was a hard-line skeptic about events in Russia for a very long time, as many of my columns in the *Washington Times* will confirm. As far as I was concerned, Mr. Gorbachev was guilty till proven innocent. He still hasn't been proven innocent especially, *inter alia*, in respect to the killings in Lithuania and Georgia before the civil war broke out. But with the failure of the August coup I became convinced (or was I taken in?) that there was no going back to communism or to KGB conspiracies against the free world. I still think a wait-and-see attitude about events in the new Commonwealth is fully justified. But that is a far cry from saying that fulfillment of the KGB's global totalitarian strategy is still the aim of those who are now the country's political elite, or that there is an invisible elite behind the visible one and an invisible elite behind that, and another behind it, and another . . .

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Soli Deo Gloria

by Kenneth R. Craycraft

Freedom and Its Discontents: Catholicism Confronts Modernity
by George Weigel
Washington, D.C.: Ethics and Public Policy Center; 179 pp., $19.95

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This book is a collection of largely reprinted material (with revisions in some cases) and a couple of original essays. Its nine chapters cover (according to section titles) "the Catholic human rights revolution," "peace and economy, again," and "the life of the mind." The expected repetitions are sometimes distracting if one reads the book straight through, but since they are not numerous, and since each essay stands by itself, Mr. Weigel has made a wise choice in not excising them.

Catholicism is not just the particular Christian tradition to which Weigel is incorrigibly devoted; after baseball, American Catholicism is also his favorite hobby. And he is especially astute at (and fond of) pointing out the foibles of the "Catholic left." In this volume he repeats an assertion of Sir Michael Howard of Oxford University that one of the great revolutions of this century has been "the transformation of the Roman Catholic Church from a bastion of the *ancien régime* into perhaps the world's foremost institutional defender of human rights." In the spirit of his understanding of John Courtney Murray, S.J., and the Vatican II instruction on religious freedom (*Dignitatis Humanae*), Weigel attempts a theological defense of religious liberty as a fundamental human right and points to the development of the Church in America as an example of its institutional fulfillment.

But skewing "progressives" within the Church while arguing for a theological

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justification of liberal democracy produces in this book a tension that has apparently gone unnoticed by its author. Weigel rightly criticizes those who want to democratize the Church, but he does not ask whether this might be the inevitable result of the Church's having given theological sanction to liberal democracy as a political theory.

The kind of Catholic to whom Weigel objects is represented by the historian Jay Dolan. Dolan criticizes John Carroll, the first Bishop of Baltimore, for having allowed himself to be spooked by the French Revolution into rejecting "republican episcopacy." Dolan wants a Catholic Church that understands "the importance of creating a 'republican' form of Catholicism in which the Church would absorb the new national experiment in democracy into its own internal life. . . . In short, Catholic Congregationalism." Weigel thinks, correctly, that this would be (is?) bad for the Church.

Weigel criticizes Dolan and other "revisionist" Catholic historians who work "to rewrite the American Catholic story line in order to prop up the sagging cause of 'progressive' Catholicism today." These revisionists celebrate the escape from the "ghetto Church" to the enlightened and progressive democratic Church of today. While a "ghettoized" attitude certainly did prevail among some Catholics, as Weigel concedes, it was never pervasive, and it presents a false choice to say that we must go from an alleged ghettoism to a trendy cosmopolitanism.

Weigel argues that this revisionist history aims to rebut vestiges of the old American nativism and its "recurring charge that Catholicism—as a body of doctrine, a matter of personal conviction, and an institution—was incompatible with American democratic republicanism." Perhaps it was once, say the progressive Catholics, but not anymore: now, despite our reactionary pope, we American Catholics are a liberated lot who think the same way as every other progressive and enlightened American. Weigel's response to them is that the Catholic Church, in history and in theory, is not anti-democratic, not anti-American, not anti-freedom, and not a reactionary barrier to legitimate progress. In fact, the Church is an unwavering defender of liberal democracy and religious freedom, especially as they are practiced in America. But, he also argues, the Church can and must maintain its peculiar claim to truth and its structured authoritative hierarchy, while at the same time avoiding a rigid "authoritarianism."

Here is the rub. Weigel argues that the Roman Catholic Church has unequivocally stated and defended a human right to religious freedom, and that in fact, "religious freedom or freedom of conscience is the most fundamental of human rights." This is a "basic claim about the essential core of dynamic human personhood." The right to religious liberty is "most fundamental because it is the right that corresponds to man's most fundamentally human dimension." It is crucial to emphasize this point. Weigel does not argue merely that freedom of religion ought to be protected by the state because the state has no competence in such matters. He is making a much more basic claim: "Religious freedom or freedom of conscience can thus be considered a 'pre-political' human right." Human freedom inheres in every man as a result of his humanity, without reference to any political conventions. Man has a natural, God-given human right of religious liberty. But curiously, Weigel also asserts that this fundamental "right of religious freedom or freedom of conscience entails an obligation to seek the truth." The first claim is dubious; the second, though sound, contradicts the first.

If religious freedom really is a "pre-political human right," then it is a right. Before God we are indeed free to believe or disbelieve; to reject His law, love, and grace, or to accept them. That is how He has created us. But do we thus have a *right* to believe as we will? Put differently, is it "right" to make the wrong decision with regard to the commands of our Creator? Before God, is a wrong a "right"? Pope Leo XIII denounced this and similar "rights" in his 1888 encyclical *Libertas*. "If nature had really granted them," the pope explained, "it would be lawful to refuse obedience to God."

From a Christian point of view Weigel is correct: everyone has an obligation to seek the truth of God. But this obligation necessarily denies a fundamental right to freedom of conscience, which entails a right *not* to seek a particular truth, or any truth at all. We cannot be obliged to do a thing, and have a simultaneous right not to do it. The better formulation is that we have a fundamental obligation to seek truth, and therefore that the state must protect the individual in this pursuit. At best, we have a *political* or civic right, not a fundamental human right, to freedom of conscience. The individual is bound to seek God; the state is therefore bound not to interfere in that search.

Ironically, for John Courtney Murray, whom Weigel often invokes to support his argument, religious liberty meant that the state is bound to tolerate those who *do not* believe in a fundamental human right to freedom of conscience. In *We Hold These Truths* Murray calls the dogma of religious freedom "the first of our prejudices," since it assumes that pluralism is the God-ordained order of the universe. While Weigel argues that religious pluralism is a positive good, Murray says that "religious pluralism is against the will of God." America is religiously pluralist, but from a Catholic point of view this "truth is lamentable."

For Murray, the argument for religious freedom is one of political prudence, not of theological principle. It is a "general Protestant tendency," he explains, to say that "freedom of religion and separation of church and state are to be . . . 'rooted in religion itself.'" But this idea is not a principle of the Catholic Church, which regards religious freedom as a reluctant concession to a sinful world. "The Catholic rejects the religious position of Protestants with regard to the nature of the Church, the meaning of faith, [and] the absolute primacy of conscience." The absolute primacy of conscience that Murray rejected sounds very much like the "fundamental human right to freedom of conscience" that Weigel endorses. By endorsing a fundamental human right to a free conscience, Weigel supplies ammunition to those agitators within the Church whom he otherwise so effectively challenges. The problem seems to be that those who argue like Weigel assume the legitimacy of various liberal values and virtues, and then come up with theological arguments to defend them.

For instance, Weigel seeks a way for the Church to be authoritative while not appearing to be authoritarian. But "authoritarian" by whose definition? In the liberal-democratic understanding, any demand that conscience conform to a particular creed (or point of a creed) is authoritarian. If freedom of conscience is a fundamental human right, no human institution including the Church (which Weigel regrettably calls a "voluntary association") can rightly abridge it. Authentic human rights ought to flourish, and the Church ought never to hinder that

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flourishing. More specifically, as a Catholic, Weigel is too eager to fit in with America, and to make Catholic theology seem as unthreatening as possible to the "American way." Catholics are called to do all things *soli Deo gloria*. If by happy coincidence that is also to do good for the country, then so much the better. But there is no Catholic mandate to support the regime, and our attitude toward liberal democracy should be suspiciously neutral, at best.

George Weigel is a careful thinker and a man of Christian integrity, but I fear he ignores this sage advice of his own theological mentor, John Murray: "The question is sometimes raised, whether Catholicism is compatible with American democracy. The question is invalid as well as impertinent; for the manner of its position inverts the order of values. It must, of course, be turned round to read, whether American democracy is compatible with Catholicism. . . . The Catholic may not . . . merge his religious and his patriotic faith, or submerge one in the other." Weigel skillfully corrects those on the left who are guilty of this error, which is no less a mistake when it occurs on the right.

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Cutting the Golden Key

by Joseph Pappin III

Edmund Burke: Enlightenment and Revolution
by Peter J. Stanlis
New Brunswick, New Jersey: Transaction Publishers; 259 pp., $34.95

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Those who know anything of contemporary scholarship or the political philosophy of Edmund Burke know that Peter J. Stanlis clearly holds the title of "Dean of Burke Studies." While Russell Kirk ushered in the return to Burke in America, it is Stanlis who has, more than any other scholar, sustained the revival of Burke scholarship. It is Stanlis who dropped the bombshell in the laps of jaded and torpid utilitarian expositors of Burke's thought with his monumental work, *Edmund Burke and the Natural Law*, first published by the University of Michigan Press and recently reprinted. This was followed by the inauguration of the *Burke Newsletter*, which became *Studies in Burke and His Times*, edited by Stanlis; his subsequent publication of *Edmund Burke: A Bibliography of Secondary Studies to 1982* instantly became an invaluable resource. The present work, *Edmund Burke: The Enlightenment and Revolution*, brings into one volume a rich cross section of some of Stanlis's writings on Edmund Burke. The book is constructed in three parts devoted to Burke's political philosophy, his critique of the Enlightenment, and his view of revolution in general and on the Revolution of 1688 in particular.

Reading someone so diverse in his subject matter and unsystematic in his style as Burke, one naturally seeks from his commentators the essential meaning unifying the literally global nature of the Irish-born British politician's works. Stanlis's reply to such seeking is that Burke "never provided a golden key to his scriptures"; but, lest one despair, "he is neither vague nor inconsistent." On both of these points, we can hear echoing across continents the strident protests of numerous scholars claiming that Burke is a rhetorician, utilitarian, conservative ideologist, whose main purpose is to sustain the nearly perfect world bequeathed to him by tradition and the British Constitution. Some, such as Ian Hampshire-Monk, in audacious fashion go so far as to deny altogether that Burke was a political philosopher. So implausible are these evaluations of Burke, especially in light of the work of Stanlis and the equally rich and penetrating work of Francis Canavan, S.J., that one can only wonder how seriously Stanlis's own work has been studied.

Actually, Stanlis's work, even in the negative reaction it has spawned, has had an enormous impact. For nearly all of the most recent scholarship—including that by F.P. Lock, Hampshire-Monk, and Christopher Reid—has been forced to acknowledge the explicit use of the "natural law" by Burke. In response, these scholars counter by declaring that Burke's recourse to natural law is a rhetorical ploy. It falls to Conor Cruise O'Brien to put the final spin on the matter, for he claims that Burke is "a conscious and deliberate propagandist," one who "had long been aware of the value of verbal violence." Perhaps, as Stanlis modestly remarks, there is no "golden key" to Burkean writ. But beyond doubt Stanlis in this volume lays before the reader those essential elements that consistently permeate Burke's politics and unify the great profusion of Burke's genius. What are these elements as disclosed by Stanlis?

Stanlis states unequivocally that "faith in the classical and Scholastic conception of Natural Law is Burke's ultimate political principle." Elsewhere he refers to Burke's "principle of moral prudence" as "the most important principle in his political politics." If "Natural Law" and "moral prudence" do not provide the "golden key" to understanding Burke, they certainly provide the basic elements of his political philosophy. Further, these two principles are intertwined. The "normative ethical principles of the Natural Law" do not have the status of mathematical theorems entering into a political calculus that details what is to be done in every particular event. Like Aristotle and Aquinas, Burke realized that moral principles necessarily have a universal import. But the circumstances to which they are applied vary according to custom, habit, tradition, and locale. Hence, the necessity of recourse to moral prudence. Stanlis holds that for Burke "prudence is the general regulator of social changes according to Natural and Constitutional law. As such, it is the cardinal virtue that supplies the practical means by which Natural Law principles are fulfilled and harmonized with the concrete circumstances of social life." Prudence does not resist "change," which Burke held to be the great law of nature.

LIBERAL ARTS

YOU CAN LEAD A HORSE TO . . .

According to a German court in Celle, Lower Saxony, a husband who consents to the artificial insemination of his wife does not have to accept paternity. The case, reported by the *German Tribune* last January, involved a couple who agreed to artificial insemination and then divorced before the birth of twins, whose "legitimacy" was contested by the ex-husband. The court deemed the twins illegitimate.

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Rather, "Prudence favored reform before revolution."

Stanlis's chapters on "Burke and the Revolution of the Enlightenment" and "Burke and the Sensibility of Rousseau" constitute not only a *tour de force* of scholarship, but they serve as a critique of modernity. The chapter on the Enlightenment serves to explain Burke's apparent skepticism towards reason as a skepticism towards "discursive rationalism" and "speculative ideology"—towards what Maritain regarded as "angelism." Here, abstract reason seeks to impose itself on politics disregarding circumstances and ignoring what Burke called "political reason," or practical reason. The chapter on Rousseau brings together the scathing charges of Burke against the spirit of the French Revolution including its radical individualism, couched in Rousseau's "central principle that people are by nature morally good" but are corrupted by "the demands of social customs and institutions." It is here, especially, that Stanlis brings our focus to bear on the greatest relevance of Burke, which is his condemnation of extreme individualism and the elevation of the sovereignty of the individual will. Consider Stanlis's own words in his chapter on "Burke the Perennial Political Philosopher": "But Burke's greatest relevance in the twentieth century . . . lies in his criticism of the respective crimes and follies of totalitarian tyranny in all its modern forms, and of the anarchy of selfish egoists who think they can live in society as though they existed as isolated, atomized individuals in a pre-civil state of nature." Clearly, at times Burke employed the modern language of "social contract" and "natural rights," but he did so only in the context of a natural law philosophy, stressing the social nature of man, his place in an intelligible, created universe with a hierarchy of natures and in a civil society that has as its main purpose the virtuous realization of human persons in community.

One of Stanlis's most insightful points is lodged within an endnote in which he asserts that Burke is *not* a "status quo" conservative. He pointedly unveils one of the most stunning inanities of recent journalism, which identifies "as conservative the most radical and doctrinaire Marxist governments that resist every effort to reform or displace their totalitarian tyranny." How absurd are such phrases as "the conservative, communist hardliners in Beijing," or descriptions of the failed coup in the Soviet Union last August as an example of "reactionary conservatives trying to turn the clock back to communism," and how deft is Stanlis's exposure of a basic misunderstanding of Burkean conservatism.

Finally, we find in Stanlis's work a fit assessment of Burke's power as a writer. "Burke did appeal to his reader's reason, sense, and emotions, but the mere presence of these ingredients in his speeches and writings did not, in themselves, make his style powerful. His imaginative fusion of all of these elements, his skill in converting an image into a state of mind and feeling, combined with his moral imagination, intuition, and erudition, enable his readers to leap from sight to insight, from the physical sense to the metaphysical essence of his subject, so that at once they saw, understood, and felt profoundly the whole point of his argument. . . . His ability to reason in metaphor was the hallmark of his political thought."

In the smooth, flowing, economical, erudite, and deeply philosophical style of Peter Stanlis, Edmund Burke has acquired an expositor of uncommon ability and tempered passion. The Burke scholar who has failed to engage Stanlis's works risks the earned disapproval of subsequent generations of Burke students. Those who seriously study Burke in light of Stanlis are altogether likely to discover the evasive "golden key" to Burke's political philosophy.

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LIBERAL ARTS

PRISONS AND AIDS

An Indiana prison inmate filed a lawsuit that would "force the state to provide prisoners with condoms," the *Chicago Tribune* reported last February. Arthur Squires, a convicted sex offender, fears the effect "a high rate of homosexual activity" will have on the spread of AIDS. A prison spokesman said providing condoms would contradict existing policy that prohibits "the type of activity that spreads the AIDS virus."

Sheer Christianity

by Frank Brownlow

Chesterton and the Modernist Crisis
Edited by Aidan Nichols, O.P.
Saskatoon, Saskatchewan, Canada: The Chesterton Review Press; 222 pp., $24.50

Thinkers of Our Time: G.K. Chesterton
by Ian Crowther
London: The Claridge Press; $21.00

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For a long time after "modern" first came into the language, it was an innocuous little word, the simple opposite of "ancient," and insofar as it had connotations, they were not very good ones. Shakespeare always used it to mean "commonplace," with strong suggestions of the slipshod and the second-rate.

The Enlightenment and the French Revolution changed that. The elite spirits of Europe, convinced they were living under what George Bush would call a "new order," consigned most things ancient to oblivion, and decided that being modern was a necessity. One result was that every institution that traced its origins to the distant past or that lived by tradition found itself in serious philosophical trouble. And of course the Catholic Church, besieged by liberals, socialists, evolutionists, higher critics, and Hegelians, was one of them. The Church's tussle with the new order produced the "modernist crisis" of 1902-1907, which ended (for the time being) with the condemnation of modernism as a synthesis of the heresies and the imposition of an antimodernist oath. *Chesterton and the Modernist Crisis* consists of nine essays placing Chesterton in relation to those events, and offering some comment on the crisis and on some of the actors in it. The book originated in 1989 as an issue of the *Chesterton Review*.

The essays are a varied group. For collectors of ecclesiastical eccentricity—always a wide and growing field—there are fascinating contributions by Valentine Moran and Aidan Nichols on the English modernist Father Tyrrell and his aristocratic backer, Maud Petre. In "The Politics of the Anglican Modernists," Alan Wilkinson describes some peculiar characters on the modernist side

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of the Church of England, in particular Dean Inge and Bishop Barnes of Birmingham, the latter an oddity who advocated "race hygiene" and speculated that St. Francis owed his stigmata to scratching instead of washing. There are also contributions by specialists on theological modernism. Emile Poulat writes on "The Catholic Church in the Modernist Revolution," and Gabriel Daly on "Apologetics in the Modernist Cultural Context." From these essays one gathers that, despite the fulminations of Pius X, modernism has triumphed.

The chief focus of the book is on Chesterton, and here the big difficulty is that during the crisis Chesterton was an Anglican who was not very interested in Rome's troubles. His attention was focused on the larger phenomenon of cultural modernism; this was the whole of which the Church's troubles were a part. Ian Boyd, the *Review*'s editor, has made the best of Chesterton's sketchy non-Catholic views of the subject in "Chesterton's Anglican Reaction to Modernism." Aidan Nichols argues in "Chesterton and Modernism" that Chesterton as a Catholic combined theological orthodoxy with social modernism, and praises his work as an early example of liberation theology. One sees why that formulation should have gratified some Catholic reviewers. A simpler explanation of Chesterton's odd mix of the traditional and the modern is that, like many compatriots, he traveled to Rome via Canterbury and took a lot of Anglican baggage along with him, including his social views.

The strongest essay is John Coates's "Chesterton and the Modernist Cultural Context," based on the "obvious but essential point" that Chesterton detected and attacked modernism "in so many departments of life and thought." This formidable piece corrects the parochialism of literary and artistic criticism by pointing out that the heart of modernism is not in the aesthetic styles of the postwar years, but, as Chesterton understood, in the later Victorian period with its contending evolutionary and immanentist cosmologies associated with Nietzsche, Haeckel, Spencer, and Shaw among others.

Ian Crowther also presents Chesterton as a champion of antimodernism in an elegantly written little book that is a good introduction to Chesterton's thought. Though not a biography, it follows a biographical pattern. Its five chapters begin with the "heresies" the young Chesterton first attacked, proceed to the orthodoxy he adopted and defended, and end with a particularly good account of the social thought that occupied his later years.

These are both admirable books, and yet each, approaching Chesterton exclusively as an antimodernist, now seems slightly off-target. Chesterton wins his arguments so easily in Ian Crowther's pages that one wonders why his modernist opponents bothered arguing with him. M. Poulat has the answer: perhaps they didn't. He tells us that modernism has imposed itself on the Church "as her actual, historic condition," and that she is now preparing to enter "into the new set of mind, at the price of a new intellectual and social equilibrium, a new regime of life and thought." And Gabriel Daly, who criticizes Chesterton for defending Christianity on cultural grounds, believes that Chesterton's approach is outdated because "the advance in interfaith and interchurch dialogue" has rendered his combativeness embarrassing, and "Christianity in the West is not under serious attack." Like M. Poulat, he anticipates the new time when apologetics will have been "absorbed into a newly structured fundamental theology."

Why do these statements seem so dated and beside the point, even a little dotty? Only a couple of years ago there was still a market for antimodernist arguments, however unsubtle, and there was still a case to be made for Poulat's and Daly's kind of accommodationism. That is no longer so. The collapse of the Soviet empire has discredited a great deal more than Marx and Lenin. The whole progressive, evolutionary, immanentist enterprise has been shown up for the verbal legerdemain it always was, and Chesterton's old opponents, Wells, the Webbs, Shaw, Dean Inge, Bishop Barnes—the whole squadron of them, known and unknown—are rags flapping in the wind. The war is over. Within his terms of reference, Chesterton was right, and his side has won.

The odd thing about these books is that neither tells the essential truth about Chesterton's place in that battle. Each, though written from a generally Christian standpoint, falls into the modernist habit of writing as though results hinged upon joining the right party, adopting the right program. That was not Chesterton's experience. As his best poem, "The Ballad of the White Horse," makes very clear, his position was a lonely one, and for much of the time nearly hopeless. From the standpoint of the worldly, he gained attention by playing the fool, and his allies were a ragtag platoon of eccentrics and misfits. Nor was he primarily fighting for Christian culture, however much he valued it. The discomforting fact is that he took his stand on sheer Christianity. He believed in Jesus Christ, a proposition as absurd and as shaming to the average intellectual of his time, lay or clerical, as it is today.

As the modernist squabbles fade from memory and new dangers shape themselves in the world, the probative and exemplary value of Chesterton's writing will lie in the prophetic accuracy of his delineation of his times, and in his expression of the faith that guided his eye. One sees the difficulties of that position for the average agnostic reader, but one also sees its justice and its necessity if truth is to be told. After all, there is one man in the postmodernist world we can be sure Chesterton would understand, and that is John Paul II, who has recently, and unfashionably, dedicated post-Soviet Russia to the Immaculate Heart of Mary—not, on the face of it, a modernist thing to do.

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Scribble, Scribble

by Gregory McNamee

The Writing Trade: A Year in the Life
by John Jerome
New York: Viking Press; 255 pp., $21.00

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Of the making of books there is no end, Ecclesiastes has it. Of the making of books about the making of books there is also a perennial flow. The shelves of a well-stocked bookstore are sure to include dozens of titles on freeing the trapped writer within, on finding one's voice, on creating that winning proposal for yet another workout book or diet guide (heaven help us all). The mustier stacks of the better libraries, too, will have a fair selection of more arcane

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how-to manuals in the form of writers' notebooks—famously those of Henry James, Anton Chekhov, and Thomas Wolfe—useful for obtaining glimpses into the difficult process of creation for anyone who would take the craft of writing seriously.

But there are other difficulties as well in writing, hardships many steps removed from finding a voice and getting subjects and verbs to agree. Among them are trying to meet deadlines when the phone is ringing off the hook and the toddlers are clamoring for lunch, of remaining inspired while one's bank account languishes for want of long-promised checks. Few writers have treated such matters, for reasons an anthropologist might brand "taboo deformation"—write about troubles and troubles will descend on your head. John Jerome's *The Writing Trade* braves such a fate, and offers a deeply considered look, at once disquieting and inspirational, into the quotidian life of a working writer.

Jerome is an accomplished author of, among other titles, *Stone Work*, *Truck*, and *On Mountains* (the last two having collapsed on the present book's jacket copy into *Truck on Mountains* by a careless publicist). He admits at the very start his nagging fear of being branded a formula author by virtue of his having written several how-to books on skiing and other outdoorsy activities; books, he says, "that have ranged from marginally successful to downright futile." He is self-effacing, perhaps to a fault:

> I am a competent but essentially invisible writer, proof that one can earn a living from writing for years without ever breaking into the public consciousness. That's okay, or so I've always claimed: all I ever wanted to do was write, quietly, for a living. Who knows what monstrosities of ambition lie buried in that assertion?

Write he does, with discipline, annually racking up a book—one was made in the twelve months this memoir recounts—and a few dozen magazine articles and calendar essays, a pace he has maintained for three decades with an annual income, in good years, that a part-time postal carrier would sneer at.

Jerome is full of complaints, most of them well-founded: editors don't return his calls or answer his queries, the leading trade journals don't review his books (that the *New York Times* gives one a favorable mention is cause for cries of joy). For all that, his book does not descend into whining. Jerome strikes the reader as a man full of mature self-awareness and properly placed worries: "After eight nonsmashes, a publisher is less likely to invest in me as a writer for the future. I am approaching sixty, and still have hopes that my career will not just dwindle to a stop; it is therefore time for things to start clicking. This makes for additional pressure, on top of the usual . . . jitters." His worries are more than balanced out, Jerome cheerfully admits at many points throughout his book, by the freedom that comes from setting one's own goals. At such happy moments *The Writing Trade* offers more encouragement than dissuasion to the would-be writer. Even if his end-of-year tax payment comes perilously close to wiping out his bank balance, Jerome remarks, what of it? He allows that the sensible solution would be a government program that pays writers like himself a subsidy to pull their typewriters out of production, in the manner of low-yield croppers, and spare reviewers and editors and creditors their troubles.

Students of writing would do well to cast aside the zen-of-writing and inner-voice manifestos that so many publishers' catalogs sport, and instead turn to writers like John Jerome and Kenneth Atchity, whose book *A Writer's Time* is essential. Perhaps a few of those students might be persuaded thereby to abandon their literary dreams for an easier avenue to worldly comforts—investment banking, say, or politics. The rest will at least take up the pen with a clearer vision of what their futures likely have in store. If their paths are to be similar to the one Jerome describes, at least they'll have no want of pleasure amid the torments.

Gregory McNamee, a freelance writer, is the author and editor of seven books.

GREAT TOPICS, GREAT ISSUES

Bread and Circuses: The Politics of Welfare—February 1992—Allan Carlson on how federal housing policies have contributed to the breakup of the family, William Murchison on the doctor and the state, and Christina F. Jeffrey on Social Security as family policy. Plus Barbara McCarthy on welfare and illegal immigration, and Jeffrey Tucker on Housing and Urban Development.

Faces of Eve: Goddess, Starlet, Poetess—March 1992—Janet Scott Barlow on the devolution of women on the screen, Thomas Fleming on marriage as the real right to privacy, and R.S. Gwynn on American women poets. Plus Betsy Clarke on the politics of rape, Anne Marie Morgan on the new technology of fertility control, and Kenneth Craycraft on Mary Ann Glendon's *Rights Talk*.

The Spanish Americas—April 1992—Richard Estrada on the Hispanic contributions to American culture, Mario Vargas Llosa on the difficult rise of the Latin American novel, Chilton Williamson, Jr. on bullfighting in Juárez, Mexico, and poems by Jorge Luis Borges. Plus Brad Linaweaver on Albert Jay Nock, William Murchison on LBJ, and Murray Rothbard on violence in New York City.

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Letter From Prison

The following is an autobiographical account of a young black man imprisoned in Illinois. I met him in 1985, when I was teaching high school classes at a county jail, and we have kept in close contact ever since. He first came to my attention because of his cocky intransigence, but given another chance, he quickly distinguished himself in memorable ways: his reading was superb, he earned his high school diploma in record time, and he even became my personal aide in tutoring the many illiterate inmates. I make no excuses for the crimes the young man has committed, and neither he nor I have any delusions about the difficult road he now travels and will have to travel for years to come.

I was a character witness for him at his sentencing hearing and was asked to testify as to his classroom accomplishments over the year I had known him. The state prosecutor asked for a sentence of 30 years in prison, but the sentence was for 15. Before concluding the hearing, the judge reminded the young man that convicts leave prison in one of three forms: as better men, as bitter men, or as dead men. He might have added that the first are rare, the second quite common, and the third—as the following account makes clear—a real and ever-present possibility.

—Theodore Pappas

* * *

I was born in St. Louis on October 30, 1966, the youngest of three boys. I was really raised by my grandmother, and I've always called her momma. She has always been the one person in the family who everyone could count on, and all of the kids always wanted to stay at her house. While we were growing up she would go without things to make sure we had food, clothes, and whatever else we needed. She is a very strong and sweet lady. She has 18 kids and I can't even count the number of grandkids. My brother and I are the only two that have gone astray. He's served six and a half years of a 12-year sentence for murder. I really don't know much about my father, but I've always wanted to know him. To this day I wonder how I might have turned out if I had known him. He would come by my grandmother's house and give me money, but he and I never spent much time together. I don't even know what kind of work he did or even if he worked at all. I've heard that he was murdered during a drug deal in St. Louis, but I don't know for sure.

One day in the summer of 1969, when I was two and a half, I was following my brother across the street when I was hit by a car. I don't remember much about the accident, other than my grandmother bringing balloons and candy to the hospital. It wasn't until I was four years old that I went home. It was hard at first because I could not understand much of what had happened. I was very shy. At the age of five, my mother came and got me from my grandmother. She wanted to move away from St. Louis and start her life over. We moved to Rockford, Illinois, and on the day we moved we had a car accident. No one was hurt, but this just added to all of our fears about moving. Once I started school, things got a little better, until my mother began drinking. My oldest brother had to take care of us. He did the cooking, washing, and everything else that had to be done. He was eight years old. For the next three years I tried everything to get away from my mother and her drinking. I told my grandmother about how she was treating us, I told the people at school, but no one would believe me. I began breaking the law.

By the time I was eight years old, I had been arrested fifteen or twenty times, for stealing candy and other little things out of stores. They made me a ward of the court when I was nine and told me and my mother that if I did anything else wrong they would take me away from her. This was exactly what I had wanted. One day in August 1976, I told my mother I was going across the street to see a friend. I think if she had known that this would be the last time she would see me for the next three years, she would not have let me leave. I walked across the street and broke into a house. The people who lived there caught me inside and held me until the police came. For the next six months I was in and out of foster homes, and often the homes were no better than being with my mother, if not worse. So I ran away. I was caught and placed in another foster home, and I ran away again. This went on for the next few months.

Then one day my caseworker told me that I was going to a group home in Rockford, and I thought this would be like all the foster homes I had been in and that I would hate it, but was I ever wrong. I was the youngest kid there, at ten years and eight months. I stayed for 18 months. I loved being there, and the people who worked there really cared. They took me camping, fishing, and helped all of us with our homework. I felt like I was finally growing up, and I was getting good grades in school, until one day my caseworker came and said I had to go back to court. I didn't know why, and I never thought they would kick me out of the place I loved. The morning I went to court I can still remember the staff telling me "no matter what happens, just keep up the good work." When I found out what the court was doing, I cried, because for the first time in my life I was happy and now even this was being taken away from me. I told the court I didn't want to go, but it did no good. They said I had been there too long and had to leave. Being that I felt strong about not going back to my mother, the court sent me to my grandmother, who had moved to Rockford. I was then 12 years old.

My mother was still getting drunk. She would call me over to her house and yell at me and make me feel guilty for telling people about her drinking and would make me cry by saying things like "you don't love me" and "why did you tell all those lies about me." I told my grandmother about this and she said that my mother didn't mean the things she said when she had been drinking and to ignore her. But I couldn't deal with this. I too began drinking. I also began stealing again, and the courts took me away from my grandmother.

I was sent to a group home in Freeport, Illinois, but I soon ran away. When they returned me to the home and

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refused to move me out of there, I set one of the rooms on fire. My caseworker then had me sent to Lake Bluff, Illinois, where I was put in another group home for about two months, until I ran away again. When they caught me this time, I had broken so many laws that they sent me on my 13th birthday to a juvenile facility of the Illinois Department of Corrections. There I got into a gang known as the Black Gangster Disciples. I joined the gang because I wanted to be something, to accomplish something, and I tried very hard to do what I was told so that I could get promoted within the ranks of the gang. Because of all the gang fights I got into, I was transferred to the state's maximum-security facility for juveniles. In 1982, while on a home visit, I broke into some homes and stole guns, money, and anything else I could carry in my hands. I gave one of the guns I had stolen to my brother, and it was with this gun that he committed murder. The court judged me a "juvenile habitual offender," and I was sentenced until my 21st birthday to the Department of Corrections. I was now 15 years old.

I was sent back to the maximum-security facility for the next three years, where I fought other gang members, guards, and anyone who crossed my path. I became a Junior Captain in the gang, which meant that I could tell any junior members what to do and how I wanted it done. Sometimes I had to hurt people for the gang and a lot of it I didn't want to do, but at that time all I felt like doing was making myself known. I could gain no higher rank in the gang at this time and could only move up by getting out and back on the streets or by getting into prison. Then, in January 1985, something surprising happened: I was set free. I had always thought I would be at the juvenile facility until I was 21. I was then 18 years old.

I was released back to my mother, and within six weeks of being out I was appointed Head Enforcer of the street gang. This meant that I kept all the guns for the gang, and if someone owed the gang money, it was my job to get it back anyway possible. If one of our members had broken one of our laws, it was my job to carry out whatever punishment the gang thought necessary, and if another gang tried to sell drugs on our streets, it was my job to put a stop to it.

A lot of the older members did not like the fact that I was so young and had so much say in the gang. So for the next six months I set out to prove myself to everyone who thought I couldn't handle the job and responsibility. Within eight months I saw that I was headed for either prison or death. In my heart I wanted out of all this madness, but my mind was set on being known on the streets. I was arrested on October 15, 1985, for "accountability," for being an accessory to armed robbery, aggravated battery, aggravated kidnapping, attempted murder, and home invasion. I hadn't committed these particular crimes—an armed gang member had broken into a hooker's house, where rival gang members were known to hang out, and stolen $200 and a bag of pot—but I knew the guy in the gang who was responsible and I wouldn't identify him. For this I was sentenced on June 26, 1986, to 15 years in prison.

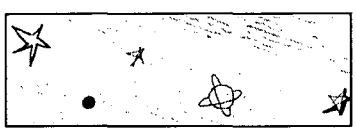
While at the county jail, awaiting trial and sentencing, I signed up for high school equivalency courses. My reason was to get out of my cell, and school was the only way to do this. Most of the guys in the class I knew from the streets, so I thought I'd just come to class to talk and see everyone. But the teacher thought differently and didn't put up with my b.s. I was mad at the world, but this teacher saw past all the bad things about me and tried to show me that I could learn. At that time, if someone had told me that this teacher and I and his family were going to become the best of friends, I would have said they were crazy. He kicked me out of class in the beginning for not wanting to learn and for not letting anyone else learn. He let me back in, but the same thing happened. After about two weeks of being out of class he came to my cell in "seg," meaning segregation or solitary confinement, where I had been placed for smarting off. He made it clear that I was going nowhere in life, and that only I could change my future. He agreed to let me back into class—against the lieutenant's suggestion that I be allowed to rot in "the Hole"—if I paid attention and worked and tried not to take over the class. And I did what he said. I passed all of the exams, got my high school diploma, and then became his aide, tutoring other inmates how to read and study for their degree. This surprised everyone.

A lot of people said I was going to school only because I wanted to look good for the court when sentencing time came, but I really didn't care what people thought, because I could see and feel a change in myself. When I was sentenced to 15 years, I knew the only way people would believe that I wanted to change was to give up what I had tried so hard to be, a "gang chief."

The prison I was sent to just happened to be run by the very gang I had belonged to for most of my life, and if you were a member of this gang you would not want for anything. I knew that if I was going to be strong and give up this life, I would have to do this here and I could not put it off. So when I walked through the door I let everyone know that I was no longer active in the gang. At first I thought that everything was going to work out with no problem, until the gang told me that I had to remove the gang's symbol–a tattoo of a six-point star–from my arm. One day some of the gang members told me that I would have to stab an officer for the gang or die. I reported this and went into p.c. (protective custody), which means solitary confinement. After about four months of going crazy in p.c., I was transferred to another medium-security facility.

I liked this place a lot, because it was close enough for me to have two or three visits a month from my ex-teacher and his family and I could enroll in college classes. I had high hopes that I could stay out of trouble and at the same time study

LIBERAL ARTS



TORTS AND TARTS

A Manhattan law firm has asked the ethics committee of the New York County Lawyers' Association whether it is "acceptable for female lawyers to wear pants suits in court." According to the *New York Times* last January, a lawyer for the unidentified firm "feared that women wearing pants suits in court runs afoul of provisions of the Code of Professional Responsibility that lawyers be 'dignified,' 'refrain from morally reprehensible conduct' and 'not engage in conduct that offends the dignity and decorum' of court proceedings."

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toward a college degree. This worked out fine, for about a year, until the gang fights began again because of my tattoo. The Disciples at this prison told me that if I didn't get the tattoo removed, they were going to burn it off me. After four fights with gang members, I talked to the prison officers and warden and told them the reasons for the fights and asked if I could have the star removed. I was told that I would have to pay for the removal myself, which I said I could arrange for, but instead of following through with this, they had me transferred to a *maximum*-security prison.

Here the same problems happened, the same fights for the same reason. This time, when I refused to rejoin the gang, members began taking things out of my cell when I was gone, and after what little stuff I had was all stolen, like my tennis shoes and blue jeans which people had bought for me as Christmas and birthday presents, they came after me. One day they arranged with an officer to have all of the cell doors on my gallery open at once, so they could roll me. I had a pass to get some clean sheets from the laundry and while coming back to my cell all the doors opened up and about sixty guys jumped out. I really don't know what happened next, except that someone came up behind me, grabbed me by the neck, and when I woke up I found I had been beaten. My face was cut badly, over and under my eyes, my nose was broken, I had a concussion and bruised ribs, and my clothes had to be thrown away because they were covered with blood. After two weeks in a city hospital, everything came back to me and I identified the guys I could remember. I was put back in p.c. and made to take a lie detector test to prove I really didn't have anything to do with the riot, which I passed. They then transferred me back to a medium-security facility, where I am now.

Because of the six-point star on my arm, all the officers here think I'm still part of the gang and all the gang members give me problems because I'm not. I spend most of the time by myself, just trying to survive and stay out of trouble. I'm currently back in p.c. because the administration says both the Disciples and the Vice Lords, the rival gang, want me dead. I've again asked the warden if I could get this tattoo removed, but so far no answer. At times I wonder if it wouldn't be easier to rejoin the gang, but this would mean I would have to hurt someone. The prison nurse put me on tranquilizers to calm my nerves, because I'm getting increasingly frustrated with this whole situation. I'm also enrolled in two college classes, and have a radio I can listen to so that, when I do get out of p.c. I can stay inside my cell and have something to do other than mixing with the gangs. I could be released in 20 months, and with any luck, I'll survive the time and have a chance to start my life over.

Letter From New York

by Richard Irving

Taxi Drivers and Minority Crime

◆

Driving a taxi in New York City is inextricably linked with the subject of race. While it is true that no subject is more vexatious for society as a whole, the taxi driver is forced to confront the issue in a way few others are. Though few New Yorkers have not been victimized by black or Hispanic crime, it is the taxi driver who still has the lion's share of horror stories to tell. Even other small businessmen, many of whom carry licensed handguns, are not in quite the same position as the taxi driver, who is prohibited by law from carrying a licensed firearm or anything else that could be construed as a weapon. This vulnerability to crime leads to an expected and understandable set of beliefs: as people who converse with them know, there are few drivers who could be called liberal.

When I started driving a medallion cab about ten years ago I was in the process of abandoning my liberalism, but my views had not quite reached their present pessimistic state. I had by then lived in Manhattan for several years and did not consider myself naive about its dangers. But, then, I had not yet been mugged and had had relatively limited contact with blacks. In those early days I would stop for almost anyone who hailed me; I didn't know any better. I found the night shift to be less demanding and stressful than the day shift and, since I was leasing a taxi from a private owner, was working without the bulletproof partition separating the front of the cab from the back. But most of my fares proceeded without incident, and I began to think of it as almost a kind of game in which customers were forced to pay me in exchange for my driving them to their destination. My innocence still amazes me, and I consider myself fortunate to have survived that period.

Blacks have become associated with violent crime to such an extent that even being alone in a car with an unknown, young black male sitting behind you can be a terrifying experience. If the black customer were silent, my paranoia would go to work and convince me that he was plotting to rob or kill me. I would take note of his behavior, looking for clues. He's whistling and gazing out the window. That seemed to me a good sign. Or he's reading a newspaper. That also was encouraging. Sometimes when I was scared I would begin humming audibly or tapping my fingers to the music of the radio, hoping he would perceive me as a relaxed, *simpatico* fellow with much to live for and would shelve any plans for mayhem. In a few cases, the combination of being in a bad neighborhood, late at night, with a silent young black man sitting behind me felt so ominous that when he simply paid me and departed, the same as anybody else, I felt I had been granted a reprieve or that I had used up one of my nine lives. If they knew how terrified I had been, they never mentioned it.

Needless to say, it took only a few incidents of this kind to make me more selective in choosing my customers. But unlike many white drivers, I continued to pick up with some frequency respectable looking blacks. Black women, at least, were as unthreatening as white women and, as long as I was unafraid of my customer, and as long as I felt that I was driving a reliable car, it did not especially trouble me to drive into a minority neighborhood.

But black men were another story. Deciding which ones to stop for was a tricky matter. When hailed by a black man, I would sometimes slow down and scrutinize him, paying particular attention to his eyes, trying to discern whether he might be harmless. I still believe it is possible to learn a great deal about a person by looking into his eyes, but considering the stakes, I couldn't afford to be wrong, even once. Sometimes I would actually stop for black men, only to get second thoughts, and drive away just as they reached the door. From their

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reactions, I'm sure they thought I was deliberately trying to humiliate them; in fact, I was only responding to what I felt were honest doubts and a desire to err on the side of safety.

But having to make quick decisions on the basis of inadequate evidence is a surefire formula for mishap. One night, while stopped at a red light at 96th Street and Columbus Avenue, I opened my doors to a garishly dressed black man: I immediately knew I had made a mistake. He was going to 125th Street and Eighth Avenue but wanted me to take the West Side Highway instead of the direct route, Central Park West. I was immediately suspicious because not only is the highway darker and quieter than the city streets, but the fare would probably be four or five dollars more, as well. After giving me his destination he said nothing else, and so I glanced at him in the mirror: nothing in his appearance or demeanor reassured me.

I found myself wishing I had chosen some other line of work. I started driving west on 96th Street but had no intention of getting on the highway. I drove slowly, considering my options. I could ask him to leave, perhaps telling him I'm afraid to go to Harlem, but I knew that if I refused to take him where he wanted he had the legal right to sit in my cab all night. I could try to persuade him that another route was preferable. Or, as a last resort, I could take the advice that more than one cabdriver had given me: stop the car in the middle of the street, gather my belongings, and head for the hills on foot.

When we reached Broadway I summoned my nerve and said to him, "I'm not going to take the highway. I'll take Broadway instead." I expected him to at least verbally abuse me, possibly threaten to report me to the Taxi-Limousine Commission (TLC) or maybe, as in the old joke, just rob me there. He seemed unsurprised and said mildly, "Okay, then I'll get out here." I still believe he had plans to rob me.

At the fleet where I now work part-time, there is little interaction between the white and black drivers. The work force appears to be roughly 40 to 50 percent black (primarily African and West Indian), 50 to 60 percent nonblack, and everyone seems to accept this segregation as normal. (The nonblacks, of course, include contingents of Indians, Orientals, and Hispanics.) As we mill around the garage, waiting for the dispatcher to call our names, there are no racial incidents, though there are few nonblack drivers who do not speak disparagingly of blacks.

The nature of the job also seems to produce a need to talk about work, and when taxi drivers congregate before or after work a large part of the conversation consists of war stories. One hears tales of traffic jams, of breakdowns, of accidents, of finding money in the backseat, of being cheated out of fares, of being stopped by the police or by TLC inspectors, of arguments with passengers, of lucrative fares to New Jersey, of celebrity customers and beautiful women. And occasionally one hears of a robbery or reads in the newspaper about a murder of a cabdriver. As with other cases of violent crime, that the perpetrator is black or Hispanic is simply assumed. Though it is true that most of the drivers who have been killed on the job have been livery and not medallion drivers, this is because they are forbidden by taxi regulations from working in midtown Manhattan and are thus forced to work in high-crime areas, but this provides us small consolation since we too sometimes work in those same areas.

Crime is never far from the minds of city dwellers these days, and I have found few people who are unsympathetic to the taxi driver's plight. When I tell people I drive a taxi, one of the first questions liberals and conservatives alike invariably ask is whether I pick up blacks. "Sometimes," I answer, explaining that I'm cautious, and so far I have managed to escape without a lecture on racism. Though the hypocrisy of liberals is a byword of our times, everyone to the right of William Kunstler seems to understand that no one can be expected to risk his life for a few dollars.

Most blacks, it is well to remind ourselves, are decent and law-abiding, and most victims of crime are themselves members of minorities. It is also true that I have had many regrettable experiences with whites. But these incidents have generally been merely unpleasant, not potentially dangerous. The unfortunate truth is that there is a difference between acceptable and unacceptable risk and, given their high-crime rate, blacks constitute the unacceptable risk.

One can't help but sympathize with blacks who have difficulty hailing a cab. Black youths sometimes call out, "Please stop," "Be brave," or "We'll give you a good tip," as taxis speed past them. I have seen black cabdrivers hail a taxi by waving their license. But even if the overwhelming majority of blacks are law-abiding, so long as the majority of urban violent crime is committed by blacks, there will remain a problem. And since drivers have more to lose than they do, we will continue to pass them by.

Richard Irving is a taxi driver and freelance writer in New York City.

Letter From Georgia

by Randy Salzman

The Price of Justice

◆

In a case that ought to become a conservative rallying cry in the 1992 election campaign, the five commissioners in tiny Lincoln County, Georgia, went to jail last fall for what they saw as protecting the taxpayers' money. In dignified single file, broken only by an occasional hug from a supporter and the "Bless You, Commissioners" shouts of three hundred constituents, they were led away at high noon last October 30 in a symbolic action reminiscent of past tax and civil rights revolts. Superior Court Judge Purnell Davis found them in contempt for failing to pay a court-appointed attorney's $6,000 tab; a bill that under Georgia's Indigent Defense Program could not be contested.

That was the specific legal issue played out in this timber and livestock community of 7,400 people on the banks of Lake Thurmond. But when balanced against conservative attacks on attorneys and judicial activism, this becomes an issue with national implications. How far should a county go to protect the rights of a defendant? Should it raise taxes twice to ensure a fair trial for someone who has already admitted guilt? And should it then turn around and pay, without scrutiny, the bill of the attorney whose work accounted for 5 percent of the county's 1990 budget? The commissioners' contempt of court is, in effect, a case about the dollar cost of civil liberty.

It began in July 1988 when Johnny Dee Jones, now 26, crawled through an unlocked drainage gate at the McCormick Correctional Institute, just across the South Carolina border from Lincoln County, to escape his 22-year sentence for armed robbery. Four hours

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later the alarm went out to law enforcement officials. It was too late. Jones was across the state line and two days later stabbed Randall Garvin Reeves and his stepdaughter, Leigh Drew, on the porch of their Lincolnton home. Reeves was dead on arrival at a Washington, Georgia, hospital and, after threatening Mrs. Reeves and her son, Jones made his escape driving their car. Police caught him a few days later, and in July 1990, amid a flurry of publicity, he went to trial.

To cover the cost of the trial the county raised taxes some $90,000. It wasn't enough. The capital murder trial and sentencing cost in excess of $100,000—the largest single line item in the county's 1990 budget. Jones's attorney, Jimmy Plunkett, appealed his death sentence and on September 23, 1991, the Georgia Supreme Court, citing pretrial publicity, unanimously overturned the conviction. The appellate court said 38 of the 42 members of the jury panel had prior knowledge of the case and that an expensive change of venue should have been granted. Though jurors had sworn under oath that they could put aside any media coverage, as prescribed under previous change of venue decisions, the high court made pretrial publicity the issue, not the jurors' ability to ignore it. "Not once did anyone from the Supreme Court contact me to ask what evidence was considered in the conviction," juror Sheila Wilkes complained in a letter to the *Lincoln Journal*. "We gave Jones the benefit of every doubt. We refused to even consider two eyewitness accounts of the murder because they presented too many discrepancies when compared to other evidence presented in the case." The other evidence included Jones's two admissions to the murder, a taped confession, his fingerprints, some of them bloody, on both the Reeves' house and car, and his use of the murder to taunt another man he later shot.

"I think it's about time that someone stood up to the Georgia Supreme Court and the U.S. Supreme Court on the verdicts they're overturning, and I'm prepared to represent the people of Lincoln County in flatly telling the Supreme Court that if they want to retry this man, then they can pay the bill," County Commission Chairman Walker T. Norman told reporters at the time of the reversal. Norman and the other commissioners became even more enraged when they learned that state law demanded they pay Plunkett for 156 billing hours on the successful appeal. Judge Davis—refusing to allow them to see the bill, also as required by law—gave them until October 30 to hand over $6,000. This they did not do, and at two minutes until noon the day before Halloween, the county sheriff ran well-wishers and reporters out of Norman's office to read the commissioners "their last rites," as a bystander put it. "I think . . . the grass roots people are voicing their opinion," Norman said preceding his arrest. "We feel that something has got to be done if we're going to have a judicial system that's responsive to the people."

Prior to being fingerprinted, the commissioners discussed a second tax hike, at least $125,000 this time, to re-try Jones. They also filed a $2 million suit against the South Carolina Department of Corrections for allowing Jones to escape. Finally, they went to the financially strapped state legislature in hopes of getting Georgia to pick up the tab for a new trial. This, however, is an unlikely scenario, since the counties of Dawson and Seminole have suffered much the same legal-financial problem, and Georgia is battling an ongoing budget crisis by laying off state employees.

There apparently has been no talk of saving tax money by dropping the capital murder charges against Jones. However, this option is likely to be considered by other jurisdictions in similar situations in the future because the country suffers from a nationwide legal gridlock. In federal courts today, one in ten civil cases has been on file in excess of three years, and eighty thousand cases are more than a year old. In New York City, a misdemeanor case, after arraignment, takes almost two hundred days before a trial verdict is reached, and in Philadelphia, with 13,000 pending felony charges, sheriff's deputies quit serving papers in civil suits for lack of time. More and more the public blames these kinds of problems on lawyers. Echoing Vice-President Quayle, many Americans say that 770,000 attorneys, 70 percent of the world's total, are simply too many and demand a reduction. In the Lincoln County case, however, Jones's attorney was required by law to file an appeal. It was not his choice. Furthermore, even if Jones is convicted again in a second, more expensive trial, another state-mandated appeal will be filed. According to the Georgia Department of Corrections, the typical death row inmate files at least four costly legal actions. Only one inmate in ten actually goes to the electric chair, after an average 11 years of being housed at $25,557 per year, $10,000 more than other prisoners.

The repercussions of the Lincoln commissioners' one-day jail stay are being felt throughout the state's legal circuit. Though the Supreme Court reheard Jones's appeal and still voted for reversal—this time in a 4-3 vote—Chief Justice Harold G. Clarke is presently urging the state to cover more of the cost of indigent defense. Since almost one-quarter of Georgia's death penalty convictions are overturned, many due to "ineffective counsel," there are calls for a state public defender's office to handle death penalty cases. In neighboring Columbia County, officials not only plan to move the criminal trial of Richard Daniel Starrett some two hundred miles, they also were compelled to change the venue on a civil action concerning Starrett's mental competency, thereby potentially tripling case expenses. And in Richmond County, the district attorney opted to

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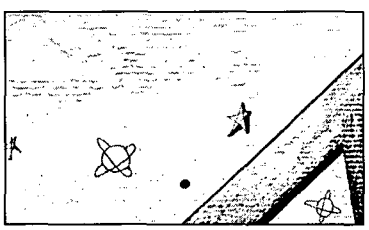

PROCREATION AND DEATH ROW

Claiming the "right to reproduce," 14 Death Row inmates in San Quentin have filed a suit against the state of California. Last January, syndicated columnist Ellen Goodman reported the so-called "right to procreate by artificial insemination" with a "willing woman" and listed this among the latest examples of bizarre lawsuits, expanding individual "rights," and an obsession with reproductive technology. The prisoners' attorney, Carter King, argues that "procreation is a basic right and executing all future generations is extreme." This type of lawsuit has been tried twice before in Virginia and Nevada.

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plea bargain away the death penalty in a case where a teenager was murdered over a football jersey, at least partially to escape the massive trial cost. The district attorney had promised repeatedly that Carnel Clyde Frasure would pay the ultimate price for allegedly shooting a 16-year-old child over a Miami Hurricanes jersey. Frasure—a "cold-blooded, execution-style" killer, according to the district attorney—is now eligible for parole before the turn of the century.

Randy Salzman writes from Augusta, Georgia.

Letter From the West Indies

by Geoffrey Wagner

Crime and Punishment Among the Last Englishmen

◆

England abolished capital punishment in the mid-1960's when few capital crimes were committed there, and corporal punishment was abolished long before that. Sometimes when I am in Manhattan, reading of the constant homicides there, I recall the four "Mayfair Playboys" of my not-so-distant youth who were sentenced to the "cat" in two doses of eight strokes, the full order of 16 being thought unbearable at one time. Their offense: beating up an old lady (they did not even rob her). Last year most crimes in Britain, which admittedly doubled from 1979 to 1990, were simple car thefts. In the East Sussex in which I was brought up I hardly ever saw a policeman (for some reason London's Met, or Metropolitan police, used to refer to their country colleagues as "Swedes").

In 1966 England appointed its first colored policeman (a Coventry Pakistani). Upon independence every ex-British Caribbean island—Montserrat and Belize choosing to remain dependent—retained the death penalty by hanging. Throughout all of them, prison governors, prison staffs, police commissioners, police forces, and local criminal investigation departments are drawn from indigenous populations. This interrelatedness makes for efficiency in apprehension and conviction of criminals. When Scotland Yard officials arrived in Grenada last year searching for a West Indian fugitive who had killed his paramour in London, they were astonished to find him picked up by the local force within hours. Similarly, when the sometime governor-general of Bermuda, Richard Sharples, a wartime friend of mine, was murdered while walking his dogs outside Government House, his three assassins (who had first strangled the dogs) were rapidly apprehended, tried, and hanged.

Throughout these islands due process seems to be scrupulously maintained. We do not amputate hands or shoot 66 drug dealers in the back of the neck without appeal in a day, as does China. The trial of the pro-Cuban revolutionaries who murdered Prime Minister Maurice Bishop of Grenada, together with most of his government, in 1983 lasted 90 days. The appeals, involving 14 attorneys (all Jamaican but for one Guyanese), went on for over seven years. As each was paid a thousand dollars a day for litigation, and was put up in the best hotel, their expenses threatened to bankrupt the country. In short, these are small democracies that believe the death penalty only fails to deter those whom it fails to deter. They are mostly agricultural and religious communities, and American television has only recently hit them (chiefly in tourist hotels, for the cost of a satellite dish is prohibitive).

St. Vincent recently hanged without incident a father-son robbery team guilty of murder, manslaughter, and conspiracy to murder. Jamaica has been holding close to a hundred on death row while, as I write, Trinidad is sequestering 113 Moslems on 15 capital charges each after the group's seizure of the Port of Spain parliament building (the Red House) and the shooting in the leg of Prime Minister A.N.R. Robinson. Furthermore, most of these islands retain flogging, at least on the books under its perhaps more meliorative term of whipping, which is sometimes carried out in magistrates' courts. In Grenada last November a 47-year-old man was sentenced to seven years in prison and seven strokes of the cat for raping an 11-year-old girl, surely enough to satisfy Andrea Dworkin and the most extreme of the man-hating feminists (though the brutal instrument that ripped up the backs of the Mayfair Playboys in the 30's is no longer employed). The Barbados cat, used on two rapists last year (one having raped his own daughter), consists of four or five hempen thongs. When in St. Lucia a short while ago a man was sentenced to have his whipping carried out publicly in the capital, Castries, half the population streamed into town to see it done, and it was accordingly ordered indoors. (One is reminded that Amnesty International is forever campaigning against the brutality of three strokes of the birch, in front of parents, on the Isle of Man, a fate any British schoolboy of my generation would laugh at.) Obscene language, of a far less obnoxious nature than that heard on any New York subway, is locally punishable and punished. In a society of total promiscuousness and "outside" children, the Windwards disallow *Playboy* and *Penthouse*. Officially, at least, our morals like our hems are high, and in the case of crime and punishment West Indians are the last Englishmen left around.

I watched the Maurice Bishop murder trial at close hand. The 14 apprehended (13 men and one woman) after the U.S. intervention of October 25, 1983, now Thanksgiving Day on the island, were accorded more than seven years of raucous appeals. The woman was the Jamaican wife of the group leader, Deputy Prime Minister Bernard Coard, and incidentally an heiress to the Tia Maria liqueur fortune. All but one were sentenced to death by hanging, Judge Dennis Byron of St. Kitts donning the black cap (actually a piece of material). On July 11, 1991, the Grenadian Court of Appeals, under Barbadian Sir Frederick Smith, upheld all the convictions. The attorney general could not allow any further appeals and, no reprieve coming from the Crown, through Her Majesty's representative on the island, Governor-General Sir Paul Scoon, those so sentenced had to hang, including the woman, a first for Grenada, though by no means for Trinidad. A short book called *Yield to the Night* purports to describe the last hanging of a woman in England, indeed a pitiful case. What followed in Grenada was some clumsy, even cowardly, footwork.

Carnival was on and effigies of the Coards were hung in Market Square. Clearly, the relatives of the innocent civilians killed in the massacre around the old fort wanted justice done. Equally clear was that neither the governor-general nor Prime Minister Nicholas Brathwaite had the stomach for it, least of all the swinging of a woman. The atmosphere was further inflamed by the highly placed clemency addicts on the island, as well as those off it, notably the militants in

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England and the likes of Congressman Mervyn Dymally in the United States, who formed ad hoc committees posing as larger voter bodies (Dymally's as the whole of the U.S. Congress) and sent faxed petitions on behalf of the Coardites. Then Amnesty International got into the act, with rumors that Jesse Jackson was not far behind.

This was curious since none of these sensitive souls had seen fit to criticize our other islands, like Barbados, Jamaica, Trinidad, or even little Dominica, which regularly hang criminals. Grenada, receiving the brunt of Amnesty International's ire, had not used the noose for a decade. Nor does it have a hangman. The main newspaper on the island chimed in with these assiduous democrats, running an inflammatory story that claimed five of the condemned had been selected to be hanged at the dead of night, and that the Richmond Hill prison had gibbets, straitjackets, graves, and a priest all ready.

Of course, if five were hanged, then all had to be, including the woman. Equally, pardon Phyllis and you had to pardon the lot. A last-minute reprieve—from whom I have never discovered—is supposed to have saved the neck of the five selectees. I could find no hard evidence from my prison contacts that there was any truth in this story, put out by an editor who is a notorious anti-capital punishment crank and a lawyer who was in fact the attorney general of the revolutionary government. Radio Grenada ran a pro-clemency series with its stars being the hotheaded editor and his belligerent crony. The newspaper highlighted some melodrama about the black flag to be run up after any hanging. This hasn't been done for years—in fact this century—in any British or ex-British possession. When Thomas Hardy introduced it to culminate the pathetic case of *Tess of the D'Urbervilles*, he was roundly chastised for having indulged in an anachronism.

In the event, putting his house under heavy guard, a scared Brathwaite made off to Antigua with his attorney general, leaving behind a tape commuting the death sentences. This was fairly contemptuous and should of course have been done through cabinet and parliament. It was also defensive, Brathwaite making a big point of communism being in abeyance as moving him to clemency—as if a crime were not a crime. That he was flying in the face of public support for the death penalty was clear when he admitted: "What appears to be a popular cry may not always be the best course for the country." And when "Braff" returned to his island, he had of course to commute the death sentences of nine others who had nothing whatsoever to do with the Coards. As the chief justice hinted, it was a rough-and-ready de facto abolition of the death penalty, and Amnesty International was jubilant.

Brathwaite's crony, Scoon, next locked Grenada into the OECS (Organization of Eastern Caribbean States) Supreme Court system and rushed through on July 26 an act cited as "The Transfer of Convicted Offenders." Under this act a sentencing country within the Commonwealth may, with the convicted offender's agreement or request, transfer such person to another Commonwealth country, which will administer the sentence (or residue of same). Under this act the offender may apply for his or her transfer while being "a national of the administering country." It is hard to see this maneuver as anything but a tailor-made blueprint for Phyllis Coard to return to her influential Leninist friends in Jamaica and stir up trouble there.

By chance I was at school in England with the son of the famous hangman Pierrepoint, who later dropped Joseph Kramer, the infamous "Beast of Belsen." Typically curious about grisly affairs of the ilk, we boys were warned by our housemaster never to mention the matter, and we never did. Subsequently, I read the memoirs of both Pierrepoint and one of his assistants. The paraphernalia was minimal: none of the straitjacket stuff publicized by the excitable editor in Grenada, nor the body harness shown in the film *In Cold Blood* (it was used, when it was, for clemency's sake if anything, to prevent the body from swinging as it fell and so effect a clean severance of the second from the third vertebra). I don't think that in his whole career Pierrepoint, whose name was mischievously borrowed by Wyndham Lewis for a character in *The Apes of God*, knew a single struggle on the way to the gallows, though one customer fainted with the hood on his head. Speed was of the essence in his procedure, and his prison "screws," or warder assistants, were compassionate in the extreme, even to the point, apparently, of having to be exchanged by others who had not lived with the prisoner in his last hours, and so developed overtender sympathies. They invariably assured their charges, "You won't feel a thing." Of course, how did they know?

In the West Indies the hangman is usually not known, or is imported from other islands, often Trinidad, where recently such executioners went on strike for extra pay since theirs, they claimed, was a specialist occupation. Similarly, it is not always known that in his day, before he opened a celebrated pub, Pierrepoint was merely one of several such experts quietly summoned from some ordinary job to "give assistance" at Wormwood Scrubs or wherever. He seems to have seen his job as a necessary sanitary operation for the safety of society, to be got over with as fast as possible. Indeed, today's readers of his and others' memoirs can hardly help being struck by the casual, almost lackadaisical nature of his letters of assignment. They belong to another era, one which the West Indian islands have chosen to inherit, and Amnesty International to buck.

Geoffrey Wagner is the son of an erstwhile Puisne Judge in the former FMS, Federated Malay States, a Crown Colony of the same structure as the ex-British West Indian islands. He has taught at the John Jay School of Criminal Justice in Manhattan.

Letter From the Lower Right

by John Shelton Reed

Fight Them on the Beaches

◆

Before the drive from California to North Carolina that I wrote about last month, I believed that American regionalism was alive and well. Now I damn well know it is. I'll tell you what I am worried about, though, is England.

Not long ago my wife and I flew direct from Charlotte to London. That possibility didn't exist until recently, and I'm not sure it's a good thing for either Charlotte or London that it does now. At the least, it's disconcerting to go direct from Billy Graham Boulevard to Victoria Station without depressurizing. Changing airports in New York really ought to be part of European travel, don't you think?

Anyway, finding ourselves back in London for the first time in a dozen years (having missed the entire Thatcher era),

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we were struck by how much less *English* the place seems these days. We'd no sooner entered the Underground than we were looking at a big poster showing a couple of guys sitting on a front porch in what was said to be Benson, North Carolina, drinking Budweiser. Yeah, it's nice that Benson is still exotic enough to have some cachet, but I find it sinister that Budweiser is available at all in the country that taught me to like bitter and brown ale.

The real problem, though, is less creeping Americanization, that perennial bugbear of the English left (and much of the old Tory right), than it is galloping cosmopolitanism in general. For instance, speaking of brew, the museum cafeteria at the Victoria and Albert doesn't sell British beer at all, just the Dutch and German lagers that one of my English friends calls "Euro-fizz."

Worse, when I went into a Knightsbridge delicatessen and asked for Wensleydale cheese, the pleasant young Pakistani behind the counter looked puzzled. "Wensleydale," he said. "Doesn't ring a bell."

Same with clothing. The Harris Tweed jackets I bought 12 years ago seem to have shrunk around the middle, so I went back to the same Oxford Street shop to buy one or two more, but all I found were those double-breasted Italian numbers, with wide pointy lapels. When I asked the clerk if they had any clothes that don't make you look like a gigolo, he suggested (sneering) that I try "someplace that caters more to the tourist trade." (After smarting under that insult for a while, I did, and found what I was after.)

Even in matters of language some Brits seem determined to jettison their heritage. While we were there, an article in the *Telegraph* reported that BBC radio is going to read through the Bible, but despite the recommendation of the poetry department and listener mail that ran ten to one in favor of the King James Version, the religion department was holding out for a modern translation.

At least one tradition persists, however: the bloody-mindedness of the English worker seems to have been unaffected by all the years of Thatcherism. Studying in the splendid old reading room of the British Museum one afternoon, for example, I was forcibly reminded that the ghost of Karl Marx haunts the place in more ways than one when the stillness was shattered by a great clearing of throat on a public address system I'd never realized was there, and a working-class voice announced that no more books would be delivered to readers that day because of "industrial action" by the library staff. (Scores of shabby scholars shuffled, grumbling, to the exits.)

Outside of London it was easier to believe that maybe, just maybe, there will always be an England. Where else, for instance, would people eat strawberries and Devonshire cream on the lawn of a grand country house (in our case, Cliveden, Lady Astor's estate on the Thames), then sit in the rain to watch an amateur production of *The Taming of the Shrew*? And where else would there be a market for something called a "chip buddy": french fries on white bread, with mayonnaise?

And, despite all the incursions of un-English ways, many English folk retain a strong, irreverent xenophobic streak that I rather admire—at least when it's not surfacing as cruel and pointless Paki-bashing. Consider the following unattributed verse, protesting the Channel Tunnel linking Great Britain to the Continent. (It was passed on by a friend who copied a copy of a copy, and it seems to be an example of modern, urban photocopy folklore, but if it has a known author I'd like to be corrected.)

Ode to the Chunnel

There'll be carloads of Louises
From Parisian stripteases
Importing foul diseases
Into Kent.
There'll be modern French Wells-Fargoes
Sending juggernauts with cargoes
Of froglegs and escargots
And men's scent.

There'll be Dutchmen, too, by jingo,
Who'll refuse to speak the lingo,
Coming over for the bingo
And the dogs.
And through this umbilical,
Seeking knickers from St. Michael,
Girls from Rotterdam will cycle
In their clogs.

There'll be Danes on every corner,
Faces pink after a sauna,
Trying hard to sell us porno-
Graphic books.
There'll be men like Julius Caesar
Getting in without a visa,
Careless architects from Pisa,
Bloody crooks.

There'll be wealthy German campers
With enormous picnic hampers
Full of sauerkraut and champers
And pork pies.
There'll be Eyeties slick and smarmy,
Reared on pizza and salami,
Turning up at Veeraswamy
Without ties.

There'll be Swedes of charmless candour
Coming over to philander,
Spreading left-wing propaganda
Against wealth.
Belgian girls of great proportions
Who have failed to take precautions
Will drive over for abortions
On the Health.

There'll be Spanish señoritas
Jamming all our parking meters
With their miserable pesetas—
I don't know!
And señors doing sambas,
Shouting "Vamos!" and "Caramba!"
And believing that the amber
Light means "go."

There'll be Austrians with poodles
Wanting membership of Boodles,
Then demanding apple strudels
With their tea.
There'll be lecherous Kuwaitis
Driving lorryloads of Katies
From the Thames to the Euphrates,
C. O. D.

There'll be men from Lithuania,
From Rumania and Albania,
Pennsylvania and Tasmania,
I've no doubt.
So, dear immigration panel,
Boys in sports jackets and flannel,
Please protect our English Channel—
Keep them out!

Now *that's* the England I remember, and one thing I liked about it was that it wasn't sure it liked *me*.

While in England, John Shelton Reed finished writing Revolt Against Common Sense: The Cultural Politics of Victorian Anglo-Catholicism, *which will be published in 1993.*

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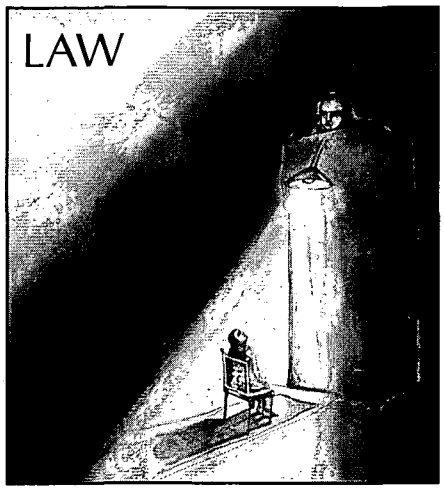

Anna Mycek-Wodecki

Coping With Street Crime

by Murray N. Rothbard

Any cogent discussion of crime must begin by casting aside the obfuscations of criminologists and social scientists who habitually lump together all types of crime. But while most people can be made to wax indignant against fraud or against such abstract "crimes" as insider trading, or even become outraged at employees taking pencils from their employer, these "white-collar crimes" do not terrify them because they do not violate the physical integrity of the person or the home of the victim. The latter crimes are the ones that terrify and destroy the security of the average person and wreck social peace. We might call these malign forms "crimes of violence," except that we should also put in the same category home burglary, which technically does not use weapons but inflicts the same sense of personal violation as more directly violent crimes. Let us then call them "street crimes," which would include crimes of violence on urban streets or sidewalks, and also the home burglaries in suburban or rural areas.

Economists have added their own special forms of fallacy and misdirection to the problem of crime. To most economists, led by Chicago School economist Gary Becker, crime is a business like any other, and the criminal, like any businessman or investor, engages in a rational cost-benefit calculation in deciding whether or not to commit a crime. He compares the expected monetary benefit from the crime, with the expected costs of getting caught and the type of punishment probably received, all costs and benefits duly discounted by the rate of interest. This sort of analysis may well be applicable to business-type crimes, such as committed by organized groups of jewel thieves, bank robbers, or counterfeiters, or to the sort of mafioso activities immortalized in *The Godfather*. But these business-type crimes don't terrify, and they do not qualify in our definition of street crime as street assaults, rapes, muggings, shootings, as well as home burglaries. To apply monetary cost-benefit analysis to street criminals in the Becker manner is so divorced from reality as to verge upon absurdity.

Take, for example, the latest fashion in street crime, rampant in Detroit, which in so many ways has blazed the path in this field and now spread to other urban areas: the drive-by shooting. A driver pulls up alongside his victims, opens fire, and then zooms off. How in the world can this practice be encompassed by Chicagoite monetary cost-benefit analysis? More and more, it has become clear that much or all such street crime is done not for the money but for psychic benefits. One young lad, when asked why he killed someone at random in a drive-by shooting, replied: "I just felt like killing someone." Some years ago, they would have replied "for kicks," but it seems that anomie has replaced a sense of joy among young muggers and murderers.

One reason why standard economics has gone so far astray is that, ever since Adam Smith, economists have routinely assumed that people are exactly the same as every other, with the same values, norms, and preferences, and that they only act differently because of different institutional indictments or constraints. Combine this egalitarian legacy of the Enlightenment with Benthamite utilitarianism, and it becomes clear why economists' analyses and policy conclusions have so often tended to be far off the mark and even counterproductive.

From its mathematical calculations, the Beckerite remedy for crime is to make punishment not so much more severe as more probable: to increase the certainty of getting caught and punished. Apart from the fact that the Beckerites have come out with precious few practical suggestions on how this increased certainty can be accomplished, there is more askew here. For the Beckerites ignore one of the important contributions of Ludwig von Mises and the Austrian School of economics: that individuals all differ in their values, habits, and preferences, and that a crucial aspect of that variety is what Austrians call their "rates of time preference."

Working independently of the Austrian tradition, the political scientist Edward C. Banfield—in his delightfully cool, bitter, and hardheaded *The Unheavenly City* (1970), and the later edition, *The Unheavenly City Revisited* (1974)—put his finger on a key to the nature of the street criminal: a very high rate of time preference for the present over the future; in other words, a very short time horizon. The street criminal places a high value on present, instant gratification: whether it be from money stolen, from rape, or from the sheer "kicks" of beating or killing another human being. He commits these acts not because punishment is uncertain, but because punishment is sometime *in the future*, and he simply doesn't care about the future. In a later article applying his analysis to street crime, Professor Banfield put the case well: "The threat of punishment at the hands of the law is unlikely to deter the present-oriented person. The gains that he expects from his illegal act are very near to the present, whereas the punishment that he would suffer—in the unlikely event of his being both caught and punished—lies in a future too distant for him to take into account." Banfield goes on to add that "for the normal person" there are other stronger deterrents to crime than the legal penalty, such as disgrace, loss of job, hardship for wife and children if he goes to prison. These deterrents do not exist, however, for the present-oriented person. Everyone in his circle naturally gets "in trouble" with the police from time to time. He has no steady job anyway, and he contributes little or nothing to the support of his wife and kids, who, Banfield adds,

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"may well be better off without him." Banfield makes it clear that the high-time preference person's lack of a steady job is not due to lack of "employment opportunities," but because this sort of person has no intention of subjecting himself to the discipline of engaging in full-time steady work.

In his trenchant analysis Banfield consciously harks back to the great political philosophers of the West, particularly Hobbes, Locke, and Hume. In *Leviathan*, Hobbes pointed out that there would be no need for government if everyone obeyed the dictates of reason and natural law, for then there would be social peace. But instead, government is required because of people acting on "their perverse desire of present profit." Hume writes about government being made necessary because "men are not able radically to cure, either in themselves or others, that narrowness of soul which makes them prefer the present to the remote."

It is all too clear that in recent decades, government in the United States has lost its reason, its being, since the high-time preference street criminals have increasingly been allowed to run riot. We are being plunged, at an accelerating rate, into the sort of horrible criminal anarchy that no libertarian or "anarcho-capitalist" would countenance for one moment. What, then, can be done?

The first step toward a solution is to identify the problem. The problem is not poverty, unemployment, discrimination, or lack of playgrounds for youth; the problem is the proliferation of a criminal class of people that Banfield defines as "the lower class," marked by trails centering around high-time preference and present-orientation leading to massive street crime. It is well-known that virtually all street crime is committed by males from the onset of puberty until their late 20's. The problem, then, cannot lie in poverty or discrimination since females are, on the average, poorer than males, and surely suffer from no less discrimination. Indeed, it is only sensible for the police to keep a particularly wary eye on groups likely to be a source of street crime. Some years ago, my wife and I purchased a used police car, with a powerful engine, just the sort of car beloved by hot-rodding teenagers. We found that we were often accosted by the traffic cops, even though tooling along well within the speed limit. The cop would shine his flashlight at our placid and nonthreatening middle-aged faces, and then stammer some patent fiction, such as "your right taillight is cracked." Although it was not exactly pleasant to be picked on, we didn't think of suing the police for harassment, since it was perfectly proper for them to keep a watchful eye on teenage drivers.

In criticizing the current treatment of crime, conservatives have denounced the coddling of criminals in light sentences, parole, and luxury accommodations in the prisons. All this is well and good, but it misses the central point, which is not so much that retaliation or punishment should be severe, as that it should be swift and immediate. The chief problem is the *delay* of punishment: the entire "process," beloved by liberals and the ACLU, of arraignment, bail, indictment, lengthy trial procedures, and appeals. The fault is the process itself that delays punishment to what the high-time preference criminal sees as the remotely distant future. Sometimes the delay and the argument become ludicrous. After appeals had kept Sacco and Vanzetti in death row for years, leftists began saying it was "cruel and unusual punishment" to keep these murderers so long awaiting execution—reminiscent of the old joke about the man who murdered his parents and then pleaded for mercy as an orphan.

Short of the unacceptable idea of incarcerating all males from the onset of puberty in preventive detention, the only solution to the problem of street crime is to make sure that the criminal will face—and expect to face—instant counterforce, both by his victim and by the police. The solution, then, comes in two parts. First, permit and encourage every citizen to be armed to the teeth and ready to defend himself with maximum and not minimum force. Right now, in our cities, victims have been effectively disarmed. Gun and other weapons control have deprived the average citizen of the right to defend himself adequately. In New York City, the happy hunting ground of street crime, people are not only deprived of guns, but they cannot even carry Mace, and women are not allowed to carry hat pins in their purses for self-defense. Moreover, laws prevent people from using more than absolutely minimum force in self-defense; everyone has the legal obligation to run, and your back must be literally against the wall before you can turn and use force to defend yourself against criminals.

All this must be changed. Criminals have got to know that, should they mess with anyone, they are more likely to get clobbered by their victims. Even Professor Banfield, no friend of Appalachian culture, admits that, even though the people there are highly present-oriented, their crime rate is low. For "in a society the culture of which is present-oriented, one's knowledge that others are as hot-tempered as oneself is apt to constitute (despite Hobbes and the other political philosophers) an effective social control." "In such a culture," Banfield adds, "people are likely to go to great length to avoid giving accidental offense to others, out of fear of provoking quick reprisals."

The great desideratum was once demonstrated in a short story by Mickey Spillane. Mike Hammer, hearing a noise downstairs, gets out his gun and quietly pads down the stairs, when he sees someone trying to open his safe. Immediately, Mike blows the intruder's head off. No "what are you doing there?" or "put up your hands or I'll shoot," no holding the guy there while calling the cops and all the rest of that nonsense. There is instant maximum counterforce in defense of one's person or property. Hollywood had it wrong, the wild West was not a lawless society; on the contrary, everyone was very careful to be courteous.

Next to ending all weapons control, the most important step is to unleash the police and encourage them to administer instant punishment of street criminals. Only instant punishment can be understood by high-time preference criminals. During the 1930's, New York City, despite the poverty and unemployment of the Depression, was virtually free of street crime. Why? Because the police engaged in instant beating and clobbering of the perpetrator, either on the spot or inside the station house. And, more importantly, everyone knew it.

The ACLU and all left-libertarians will be predictably horrified at these proposals. What about the "procedural rights" of the alleged criminals? As someone who is devoted to the natural rights of each person, I would reply that such rights—to person and property—are only substantive and never procedural. No one can derive from John Locke anyone's "right" to bail, or to put off punishment for three months. Procedures of the criminal law can only be decided on the basis of utility and effectiveness, and we have seen that there is no point to procedures that delay swift and immediate punishment. It is grotesque to

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worry about the "rights" of criminals when the persons and property of all of us are at risk every day in a rising tide of crime. It is almost as if the current procedures of criminal law are designed deliberately to encourage street criminals and to weaken defenses against crime. But to make such an assertion would be to lay oneself open to the gravest charge in the lexicon of the modern academic: of falling prey to the "conspiracy theory of history."

Once disposed of the bogey of "procedural rights," other methods of swift punishment, of "taking the law into one's own hands," that have had a strong tradition in American history but have had bad press in recent years, can be disinterred and resurrected. "Vigilante justice" worked far better, and far more smoothly, than has been credited by modern propaganda. But whether justice be done by the armed citizenry or by the police, let it be done, and done swiftly.

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Vagrancy Law

by Llewellyn H. Rockwell, Jr.

San Francisco's municipal palace looks like the Wicked Witch of the West might live there, only there aren't any flying monkeys. But several years ago, the monkeys set up housekeeping right out front. Supplied with food, clothing, tents, and other amenities by "community activists," hundreds of wild-eyed tramps extorted money from passersby, drank cheap wine, urinated and vomited on the sidewalk, rutted in public, collected junk, and cooked their hobo cuisine over open fires. They did everything, in fact, but bathe. It was *Mad Max Goes Homeless*.

Left-wing Mayor Art Agnos was popular with all of San Francisco's special interests, from Forests Forever to Dykes on Bikes. But when he allowed vagrants and beggars—most of whom have criminal records, are crazy, and are alcoholics or drug addicts—not merely to roam the streets but to set up a Bushville on some of the most expensive real estate in America, he was the ex-mayor at the next election. The new mayor is a former police chief and, in Bay Area terms, a member of the hard right. Frank Jordan has promised to sweep the streets as well as City Hall Plaza, but he will have his work cut out for him; like every other local official in this country, he faces court rulings that empower the bums and disarm the cops.

Before the Supreme Court gutted vagrancy laws in 1972, the police were free—in the wonderful words of a Jacksonville, Florida, ordinance—to roust or arrest "rogues and vagabonds, or dissolute persons who go about begging, . . . common drunkards, . . . lewd, wanton, and lascivious persons, common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons . . . persons able to work but habitually living upon the earnings of their wives or minor children." It was a law with more than six centuries of tradition behind it. By allowing vagrants to be punished with up to 90 days in jail, it kept the streets of Jacksonville safer and more decent. But that ordinance and all similar laws were declared unconstitutional in a decision written by William O. Douglas. It was the sort of sweeping act of judicial imperialism we have come to take for granted, but which violates the letter and spirit of the Constitution. Local laws are none of the Supreme Court's business. The central government has legitimate jurisdiction only over the District of Columbia's vagrancy laws. It's easy to see why the feds might want to obviate that responsibility, however. Arresting "habitual loafers" would not only clear the streets, it would empty most of the buildings in D.C.

Douglas called the Jacksonville statute archaic and vague and said it encouraged arbitrary arrests and allowed too much police discretion. He cited Walt Whitman's rotten "Song of the Open Road" and noted that Puerto Rican governor Luis Muñoz-Marin called loafing a "national virtue" to be "encouraged." How, Douglas asked, can loafing be a virtue in the land of palm trees and welfare, and be "a crime in Jacksonville"? Nor, he said, can a law aimed at "so-called undesirables" be constitutional, since it violates "equality." Laws "evenly applied to minorities as well as majorities, to the poor as well as the rich" are the "great mucilage that holds society together."

But this is nonsense. Justice means "to each his own," not some crazed leveling. The police must be allowed to treat different people differently. An experienced cop knows exactly who is suspicious and ought to be questioned, who ought to be moved along with a sharp word, who ought to receive a tap on the shin with a billy club as he is sent to the Bowery, and who ought to be arrested. Some bums should be given second and third chances, others not. When the police could use their own judgment about arresting vagrants—whom only morons and liberals could see as desirable—our streets were, by today's standards, idyllic.

Not too long ago, I left a good hotel on Capitol Hill to walk to my car and was surrounded by seven or eight "street people" demanding cash. It was dusk, no one else was around, and they exuded that motiveless racial malignity that characterizes the underclass. That experience was, of course, nothing unusual. In every major American city, bums rule. It wasn't only the Bush depression that lowered retail sales last Christmas. Aggressive tramps thronged big-city shopping areas, keeping many women shoppers away.

Thanks to the federal courts, aggressive derelicts live in airports, train stations, subways, and ATM vestibules. One federal judge ruled that the wall-to-wall bums in New York City's Penn Station cannot be ousted. Another claimed that begging in the subways is constitutionally protected as "free expression." Still another said that a malodorous tramp could not be shown the door of a New Jersey public library, even though he was making everyone sick to his stomach and terrorizing little children with his lunatic stare. The city has agreed to pay this man $150,000 if he and the ACLU (who else?) promise to bring no more suits about his "rights." In the good old days, he would have been tossed out of the library and onto the sidewalk and, if he persisted, into the pokey.

Vagrancy laws originated in England in 1349, with Edward III's Statute of Laborers. The Black Death had cut the supply of workers and therefore raised their wages. The king sought to hinder this process by making it illegal for exserfs to move from town to town to seek higher wages. That was special interest legislation of the worst sort, but there was a legitimate aspect to the law as well: the social breakdown that accompanied the Black Death had led to a vast increase in crime, especially wandering "wicked

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rogues" who robbed and murdered travelers. The statute was also aimed at them.

Sir William Blackstone gave much attention to the English vagrancy acts, including one of Henry VIII's that targeted gypsies, a people whose entire culture—then as now—is based on theft. The gypsies were described as "outlandish people, calling themselves Egyptians, using no craft nor feat of merchandise, who have come into this realm and gone from shire to shire and place to place in great company, and used great, subtil, and crafty means to deceive the people; bearing them in hand, that they by palmistry could tell men's and women's fortunes; and so many times by craft and subtilty have deceived the people of their money, and also have committed many heinous felonies and robberies." To "the honor of our national humanity," such wanderers are no longer executed, said Blackstone, but rather subjected to fines and jail.

Under the Elizabethan Poor Laws, beggars were forbidden to move; otherwise, it was thought, "foreign beggars" would become a burden on more desirable areas. Taking a different view from Mr. Muñoz-Marin, Blackstone believed such laws were justified because "idleness in any person" is a "high offense against the public economy." The "court of Areopagus at Athens punished idleness," he noted, and the Roman law "expelled all sturdy vagrants from the city." The English common law has long identified "idle and disorderly persons" and "rogues and vagabonds" as "offenders against the good order." The idle and disorderly, who could be punished with a month in jail, included those who could support themselves and instead lived on charity. Rogues and vagabonds, who could be whipped and sentenced to six months in jail, included the homeless: beggars who lived "in the open air," in tents, or in wagons.

When the American colonies seceded from the British Empire, they retained most English laws and customs, including those against vagrants. In fact, our founding document, the Articles of Confederation, assured all citizens the privileges and immunities of the several states, except for "paupers, vagabonds, and fugitives from justice." The commerce clause of the Constitution, the origin of so many evils, was early used to try to stop the states from inhibiting vagrants. An 1837 Supreme Court case challenged a New York requirement that ship captains report the names and last addresses of their passengers, to help keep paupers out. Any ban on free migration violated the commerce clause, it was claimed. This was the Old Republic, however, and the Court ruled in favor of New York. It is "as necessary," it said, "for a state to provide precautionary measures against the wicked pestilence of vagrants, vagabonds, and possible criminals as it is to guard" against a "physical pestilence." The justices did not foresee the day when it would be politically incorrect to guard against a physical pestilence as a social one.

In 1903, the Court upheld a California law expelling Japanese immigrants who had no "visible means of support." The Japanese-American treaty that gave citizens of each country reciprocal rights did not, of course, apply to "that class who from their habits or conditions are ordinarily and properly the object of police regulations designed to protect the general public against contact with destitute or impoverished persons." By 1941, however, in a New Dealized America, the Court struck down a California statute forbidding the importation of indigents. Such a law was unconstitutional, said the Court, because "the relief of the needy has become the common responsibility of the whole nation." It rejected the traditional view that paupers are more likely to commit crimes, "since poverty and immorality are not synonymous." (That may be true in the country; in the big city, there is all too close a correlation.) In a separate opinion, Justice Douglas agreed with the commerce-clause-based decision, but also defended an alleged "right to travel." The pernicious "rights revolution" was well under way by this time, and egalitarians like Douglas targeted vagrancy laws because they sought to protect bourgeois society from bums, while taking no notice of bums' rights.

An influential law review article in the 1950's denounced the police for moving vagrants out of middle-class areas and into the Bowery: "the freedom to move requires more than the freedom to be sent to a restricted ghetto." Also considered monstrous by liberals was the use of the vagrancy laws against people likely to commit crimes, a concept that dated to 1404 when "suspected persons" were first included in the class of vagrants. In 1965, the Court overturned the conviction of a Birmingham, Alabama, civil rights protester for refusing to move along when ordered to do so by a policeman. Such a law "bears the mark of a police state," said the Court. More than twenty-five years later, most Americans would gladly exchange that "police state" for the vagrant state that has replaced it.

In 1966, Douglas called vagrancy laws unsuited for America, whose open spaces created a land of "free-roaming people who shaped their own character." In the same nutty spirit, liberal Catholic bishops recently created a ministry for "People on the Move." In his 1972 court triumph over vagrancy laws, Douglas made what he must have felt was the clinching argument: vagrancy laws "could be used as a means of social control, as poor people, non-conformists, dissenters, idlers, may be required to comport themselves according to the lifestyle deemed appropriate by the Jacksonville police." Twenty years later, how many Americans would find that vision anything to worry about?

In 1988, sleeping and loitering in the subway was found to be constitutionally protected by a New York judge. A federal judge condemned vagrancy laws for having the "practical effect of keeping a public problem involving the human beings out of sight and therefore out of mind. Indeed, it is the unsettling appearance and message conveyed by beggars that gives their conduct its expressive quality." What was once a mark of British-American civilization is now a hate crime.

Begging is, of course, a euphemism. The actual process is intimidation, and money given under these conditions is hardly a charitable contribution, although the ACLU has long sought to blur the distinction.

Despite the popular conception, Christian charity does not mandate warm feelings about bums, let alone require us to subsidize their idleness. We are instead to seek what is in their best interests, temporally and eternally. What is mainly in their interest is that they not be bums. As the New Testament tells us, "he who does not work, neither shall he eat." As Patrick J. Buchanan said in New Hampshire, there is no "constitutional right to panhandle. If they keep doing it, I would pick them up for vagrancy and lock them up. We have a right, especially women and children, to streets that are safe and free from fear. We've got to take the streets back."

Llewellyn H. Rockwell, Jr. is the president of the Ludwig von Mises Institute.

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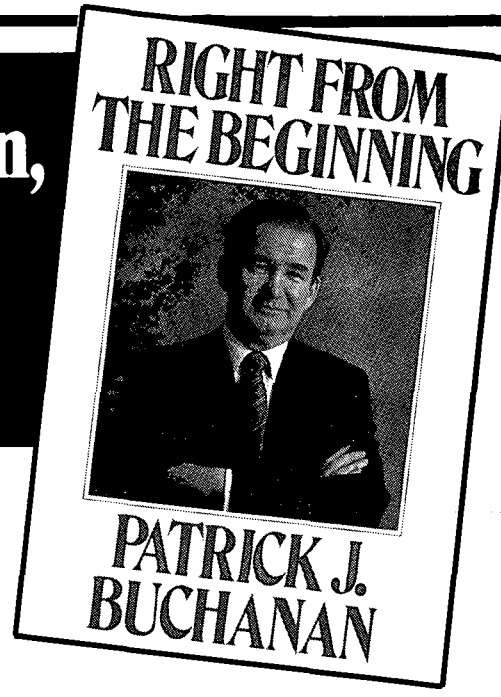

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